

**AGENDA**  
**WYOMING CITY COUNCIL MEETING**  
**CITY COUNCIL CHAMBERS**  
**MONDAY, DECEMBER 20, 2021, 7:00 P.M.**

- 1) Call to Order**
- 2) Invocation** – Pastor Wayne Ondersma, The Pier Church  
*If you wish and are able, please stand for the invocation. The Pledge of Allegiance will immediately follow the invocation.*
- 3) Pledge of Allegiance**
- 4) Roll Call**
- 5) Student Recognition**
- 6) Approval of Minutes**  
From the December 6, 2021 Regular Meeting and the December 13, 2021 Work Session
- 7) Approval of Agenda**
- 8) Public Hearings**  
*If you wish to speak to an item during a public hearing you are welcome to do so. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Comments made during a public hearing may become part of the meeting's permanent record. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.*
- 9) Public Comment on Agenda Items**  
*This public comment period is reserved for comment on agenda items only. If you wish to speak about an item that is not on the agenda, please hold your comments until the acknowledgement of visitors at the end of the meeting. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.*
- 10) Presentations and Proclamations**
  - a) Presentations
  - b) Proclamations
    1. Recognition of Harold Voorhees
- 11) Petitions and Communications**
  - a) Petitions
  - b) Communications
- 12) Reports from City Officers**
  - a) From City Council
  - b) From City Manager
    - 21-19 Acceptance of an Easement and Temporary Permit for 200 Plaster Creek Boulevard SW (City of Grand Rapids)
- 13) Budget Amendments**
  - a) Budget Amendment No. 50 – To Appropriate \$10,000.00 of Additional Budgetary Authority to Provide Funding for Office Furniture and Supplies for the Assistant City Attorney Office

**14) Consent Agenda**

*All items under this section are considered to be routine and will be enacted by one motion with no discussion. If discussion is desired by a Councilmember, that member may request removal from the Consent Agenda.*

- a) Of Appreciation to Lillian VanderVeen for Her Service as a Member of the Board of Review for the City of Wyoming
- b) Of Appreciation to Jeff Baker for His Service as a Member of the Downtown Development Authority for the City of Wyoming
- c) Of Appreciation to Nathan Peltz for His Service as a Member of the Parks and Recreation Commission for the City of Wyoming
- d) To Reappoint Members to the Board of Review for the City of Wyoming
- e) To Reappoint Members to the Greater Wyoming Community Resource Alliance for the City of Wyoming
- f) To Reappoint Representatives to the West Michigan Regional Planning Commission
- g) To Reappoint Kent Vanderwood to the Kent County Waste-to-Energy Advisory Committee
- h) To Reappoint Robert Postema as a Representative of the City of Wyoming on the Interurban Transit Partnership Board
- i) To Confirm the Appointment of Keith Morgan as a Member of the Board of Directors of the City of Wyoming Downtown Development Authority

**15) Resolutions**

- j) To Accept Grant Funding Received from the U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office) Entitled “2021 FY COPS Office Hiring Program Solicitation” (Budget Amendment No. 49)
- k) To Approve, Authorize and Direct the Mayor and City Clerk to Sign an Indigent Defense Collaboration Contract
- l) To Authorize the City Manager to Execute an Employment Agreement with the Indigent Defense Administrator
- m) To Authorize the City Manager to Execute an Employment Agreement with the Administrative Assistant to the City Attorney
- n) To Authorize and Direct the Mayor and City Clerk to Sign a Consent to a Restrictive Covenant Affecting a Portion of Burlingame Ave SW and 36<sup>th</sup> St SW Rights-of-Way Adjacent to the Speedway Site and Return it to the Project Manager for Recording

**16) Award of Bids, Contracts, Purchases, and Renewal of Bids and Contracts**

- o) To Accept a Proposal from CivicBrand and Place+Main Advisors to Provide City-Wide Rebranding, Authorize the Mayor and City Clerk to Execute the Contract and Approve the Related Budget Amendment (Budget Amendment No. 51)
- p) To Accept an Agreement with PayNearMe to Provide Payment Processing Services and to Authorize the Mayor and City Clerk to Execute the Agreement
- q) To Authorize the Mayor and City Clerk to Execute an Agreement with Progressive AE to Administer the Construction of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance Drive Project
- r) To Authorize the Mayor and City Clerk to Amend an Existing Agreement with Progressive AE to Modify the Scope of Work for the Design of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance Drive Project

- s) To Accept a Proposal from ProCare Tree Service LLC (CHOP) for Tree Trimming and Removal Services and to Authorize the Mayor and City Clerk to Execute the Contract
- t) To Approve Final Payment for the Penny Lane Storm Sewer Outfall Modification
- u) To Approve Final Payment for the 2021 Public Works Pond Rehabilitation Project
- v) To Accept a Quote from Ferguson Waterworks for Water Meters and Strainers and to Authorize the Mayor and City Clerk to Execute the Contract
- w) To Accept an Agreement from LexisNexis Coplogic Solutions Inc. for a Desk Officer Reporting System (DORS) Software Subscription and to Authorize the Mayor and City Clerk to Execute the Agreement
- x) To Authorize Entering into an Agreement with Flock Safety for the Purchase of License Plate and Vehicle Recognition Cameras and to Authorize the City Manager to Execute the Agreement
- y) To Authorize the Purchase of Additional Body Worn Cameras from Axon Enterprise, Inc. and to Approve the Attached Budget Amendment (Budget Amendment No. 48)
- z) For Award of Bids and to Authorize the Mayor and City Clerk to Execute the Contracts
  - 1. Median & Miscellaneous Landscape Maintenance
  - 2. Janitorial Services

**17) Ordinances**

- 2-22 To Amend the Code of Ordinances by Adding Chapter 68, Entitled “Stormwater,” to Regulate and Control Stormwater Runoff and Discharges, Protect Floodways, Control Soil Erosion, Protect Drains, Provide for Inspection and Monitoring of Stormwater and Other Discharges, Establish Stormwater Design and Performance Standards, and Provide Penalties for Violations; and by Repealing Articles IV and V of Chapter 86 Entitled “Stormwater” and “Stormwater Discharges” (First Reading)

**18) Informational Material**

**19) Acknowledgment of Visitors**

*This public comment period is an opportunity to share concerns or present topics to the City Council that were not part of this meeting’s agenda. This is not an opportunity for dialog with Council, but Council may make referrals or request staff to follow up. Please provide your name and address when approaching the podium. There is a 3 minute limit per person.*

**20) Closed Session** (as necessary)

**21) Adjournment**

**PROCLAMATION  
RECOGNIZING KENT COUNTY COMMISSIONER  
HAROLD VOORHEES**

*WHEREAS, Harold Voorhees was elected in 2002 as the representative of the Kent County Board Commission 8<sup>th</sup> District; and*

*WHEREAS, during his two-decade tenure as a county commissioner, Harold Voorhees has been a leader in efforts to improve public service, help maintain and enhance the quality of West Michigan; and*

*WHEREAS, Harold Voorhees has served the residents of the City of Wyoming and West Michigan beginning in 1987 as Wyoming Councilmember-At-Large, Mayor of Wyoming, Michigan State Representative, and Kent County Commissioner with absolute commitment and wisdom.*

*NOW, THEREFORE, I, JACK A. POLL, Mayor of the City of Wyoming, Michigan, on behalf of the Wyoming City Council, do here by recognize and express our sincere appreciation to Commissioner Harold Voorhees for his personal dedication and exceptional service to our community over the past thirty years, and express our profound thanks, and hope for his continued success in life.*

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**JACK A. POLL, MAYOR**  
*City of Wyoming, Michigan*  
*December 20, 2021*



# City of **Wyoming** Michigan

December 20, 2021

**City Manager** | 1155 28th St SW, Wyoming, MI 49509  
616.530.7272 | Fax 616.261.7103 | wyomingmi.gov

Wyoming City Council  
Wyoming, Michigan

City Manager's Report No. 21-19

Subject: Acceptance of an Easement and Temporary Permit for  
200 Plaster Creek Boulevard, SW (City of Grand Rapids)

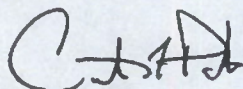
Councilmembers:

The City of Grand Rapids, owner of 200 Plaster Creek Boulevard, SW, has submitted the following described Easement and Temporary Permit. The Easement conveys permanent access rights to the City of Wyoming for the street and bike path improvements. The Temporary Permit conveys rights to access and grade on the City of Grand Rapids' property for the improvements. The Easement and Temporary Permit areas are shown on the Estimate of Just Compensation drawing. Both acquisitions are necessary as part of the Plaster Creek Boulevard Improvements project in 2022.

Grantor:	City of Grand Rapids
Parcels:	41-17-12-432-002
Right-of-way Size	170 sf and 27,199 sf – Easement (Land Acquisition) 1,112 sf and 18,655 sf – Temporary Permit
Consideration:	\$0.00 (donation)

It is recommended that the City Council accept the attached Easement and Temporary Permit, which have been approved as to form by the City Attorney.

Respectfully submitted,



Curtis L. Holt  
City Manager

Attachments: Easement  
Temporary Permit  
Estimate of Just Compensation  
Donation Form



CITY COUNCIL

Sheldon DeKryger   John Fitzgerald   Kent Vanderwood   Marissa Postler   Robert Postema   Sam Bolt  
**Jack A. Poll, Mayor**

**CITY OF WYOMING  
EASEMENT  
Parcel No. 41-17-12-432-002**

The Grantor, **The City of Grand Rapids**, a Michigan municipal corporation, whose address is 300 Monroe Avenue, NW, Grand Rapids, MI 49503

**DOES HEREBY GRANT AND CONVEY TO:**

**CITY OF WYOMING**, a Michigan Municipal corporation, whose address is 1155 28<sup>th</sup> Street, SW, Wyoming, Michigan 49509, (the "City" herein) an Easement for Highway, Public and Private Utility, Sidewalk, and Vegetation Management purposes in, under, over, across, through and upon property located in the City of Wyoming, County of Kent, State of Michigan, as follows:

**See Exhibit attached hereto for the Easement Area, Easement Legal Description, and Property Legal Description (A portion of Parcel No. 41-17-12-432-002)**

**For the full consideration of Less Than One Hundred Dollars (\$100.00).**

The Easement and the rights relating to it that are granted herein are for the City, and for any individual, company or entity (including contractors and subcontractors) authorized by the City to use the Easement. Each reference to the City herein includes by definition "each additional representative".

The City shall have the right to use the Grantors' property outside the Easement Area but immediately adjoining the Easement Area to accomplish the work; provided however, that the City shall restore the portion of the Grantors' property adjoining the Easement Area to as good or better condition than it was prior to any work having been performed.

Grantors shall not construct, install, or place any buildings, permanent structures, or obstructions in the Easement Area which would inhibit the intended use of the Easement.

Grantors shall not grant an easement to any other party within the Easement Area without the prior written consent of the City of Wyoming.

This conveyance is exempt from transfer tax under MCL 207.505(a) and MCL 207.526(a), being a transfer where the consideration is less than One Hundred Dollars (\$100.00).



DATED: \_\_\_\_\_

Approved as a form:

\_\_\_\_\_  
Attorney for the City of Wyoming

THE CITY OF GRAND RAPIDS,  
a Michigan municipal corporation

By: \_\_\_\_\_

Rosalynn Bliss, Mayor

Attest: \_\_\_\_\_

Joel H. Hondorp, City Clerk

APPROVED FOR MAYOR'S SIGNATURE  
DEPARTMENT OF LAW

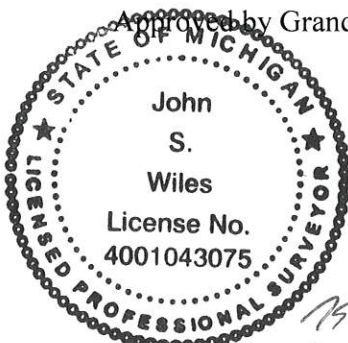
STATE OF MICHIGAN  
COUNTY OF KENT

On Nov 24, 2021, before me, a Notary Public in and for said County, personally appeared the above named Rosalynn Bliss, Mayor of the City of Grand Rapids, to me known to be the same person described in and who executed the within instrument, and who has acknowledged the same to be her free act and deed.

\_\_\_\_\_  
\*  
Notary public, Kent County, MI  
Acting in Kent County, MI  
My commission expires: 3/27/2026

KATHRYN CHAPMAN  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF KENT  
My Commission Expires March 27, 2026  
Acting in the County of Kent

Approved by Grand Rapids City Commission Proceeding No. 91182 dated October 26, 2021



LEGAL DESCRIPTION CORRECT

Prepared by and after recording return to:  
Deborah S. Poeder  
Land Matters, LLC  
11230 Tallmadge Woods Drive  
Grand Rapids, Michigan 49534

Legal Description prepared by:

Prein & Newhof  
3355 Evergreen Drive, NE  
Grand Rapids, Michigan 49525

# EASEMENT SKETCH

## 41-17-12-432-002

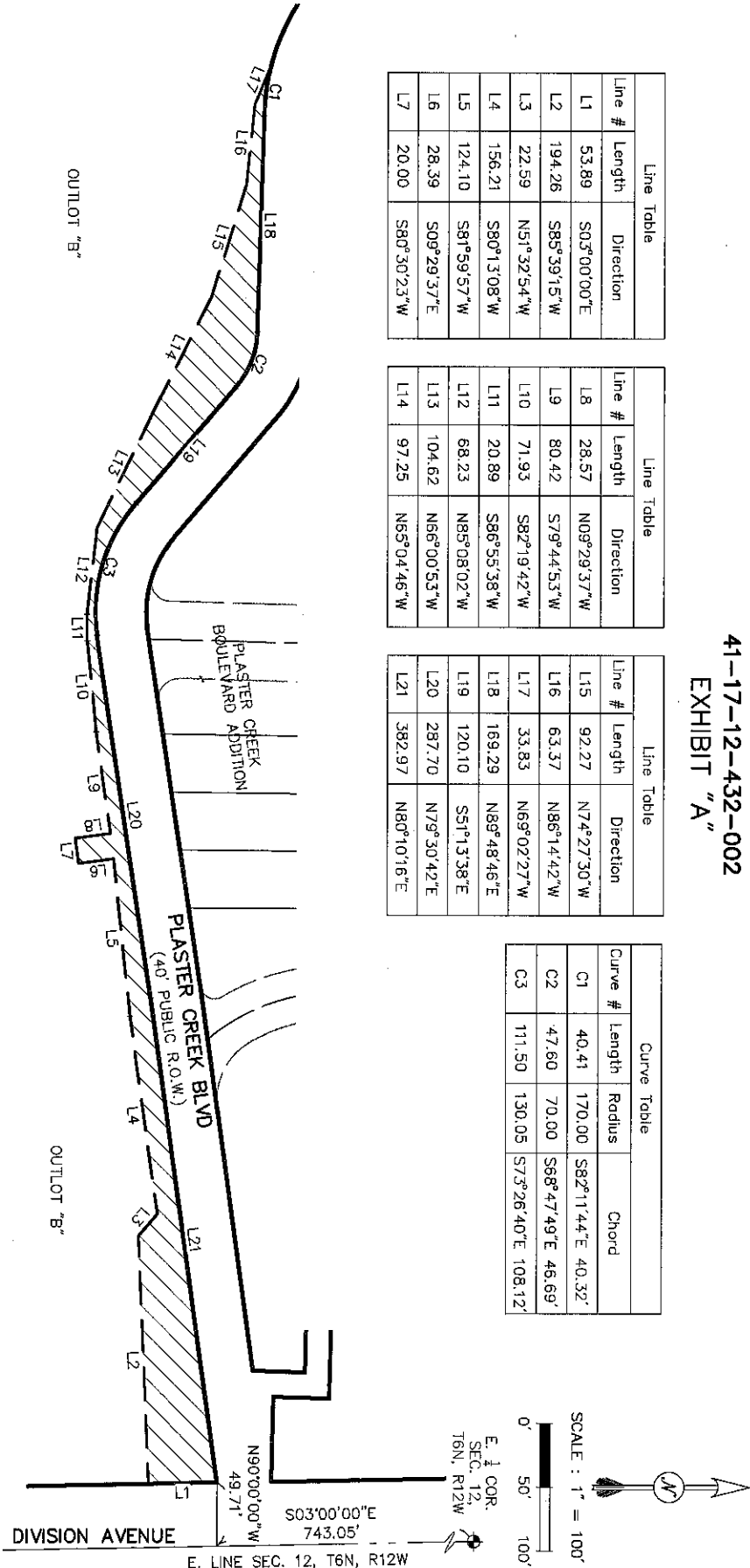
### EXHIBIT "A"

Line Table		
Line #	Length	Direction
L1	53.89	S03°00'00"E
L2	194.26	S85°39'15"W
L3	22.59	N51°32'54"W
L4	156.21	S80°13'08"W
L5	124.10	S81°59'57"W
L6	28.39	S09°29'37"E
L7	20.00	S80°30'23"W

Line Table		
Line #	Length	Direction
L8	28.57	N09°29'37"W
L9	80.42	S79°44'53"W
L10	71.93	S82°19'42"W
L11	20.89	S86°55'38"W
L12	68.23	N85°08'02"W
L13	104.62	N86°00'53"W
L14	97.25	N85°04'46"W

Line Table		
Line #	Length	Direction
L15	92.27	N74°27'30"W
L16	63.37	N86°14'42"W
L17	33.83	N65°02'27"W
L18	169.29	N89°48'46"E
L19	120.10	S51°13'38"E
L20	287.70	N79°30'42"E
L21	382.97	N80°10'16"E

Curve Table			
Curve #	Length	Radius	Chord
C1	40.41	170.00	S82°11'44"E 40.32'
C2	47.60	70.00	S68°47'49"E 46.69'
C3	111.50	130.05	S73°26'40"E 108.12'



\*SEE SHEET 2 FOR DESCRIPTIONS

**Prein & Newhof**  
Engineers - Surveyors - Environmental Laboratory  
3355 Evergreen Drive NE  
Grand Rapids, MI 49525  
www.preinnewhof.com

CLIENT:  
CITY OF WYOMING  
2600 BURLINGAME AVE.  
WYOMING, MI 49509

LOCATED IN : SECTION 12  
TOWN 06 NORTH, RANGE 12 WEST  
CITY OF WYOMING,  
KENT COUNTY, MICHIGAN  
Date : 08/11/2021  
Project No. 2200527

# EASEMENT SKETCH

## 41-17-12-432-002

### EXHIBIT "A"

SUBJECT PARCEL (TAX DESCRIPTION)  
 OUTLOTS "B" AND "C" OF PLASTER CREEK BOULEVARD ADDITION TO THE CITY OF GRAND RAPIDS, SECTION 12, T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY, MICHIGAN: ALSO THE SOUTHWESTERLY 20.00 FEET OF THAT PART OF THE VACATED PORTION OF PLASTER CREEK BOULEVARD ADJOINING OUTLOT "C" ON THE NORTH.

EASEMENT DESCRIPTION  
 COMMENCING AT THE EAST  $\frac{1}{4}$  CORNER OF SECTION 12, T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY, MICHIGAN: THENCE S03°00'00"E ALONG THE EAST LINE OF SAID SECTION 12, 743.05 FEET; THENCE N90°00'00"W 49.71 FEET TO THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF DIVISION AVENUE AND THE SOUTH RIGHT OF WAY LINE OF PLASTER CREEK BOULEVARD, AND THE POINT OF BEGINNING; THENCE S03°00'00"E ALONG SAID WEST RIGHT OF WAY LINE OF DIVISION AVENUE 53.89 FEET (L1); THENCE S85°39'15"W 194.26 FEET (L2); THENCE N51°32'54"W 22.59 FEET (L3); THENCE S80°13'08"W 156.21 FEET (L4); THENCE S81°59'57"W 124.10 FEET (L5); THENCE S09°29'37"E 28.39 FEET (L6); THENCE S80°30'23"W 20.00 FEET (L7); THENCE N09°29'37"W 28.57 FEET (L8); THENCE S79°44'53"W 80.42 FEET (L9); THENCE S82°19'42"W 71.93 FEET (L10); THENCE S86°55'38"W 20.89 FEET (L11); THENCE N85°08'02"W 68.23 FEET (L12); THENCE N66°00'53"W 104.62 FEET (L13); THENCE N65°04'46"W 97.25 FEET (L14); THENCE N74°27'30"W 92.27 FEET (L15); THENCE N86°14'42"W 63.37 FEET (L16); THENCE N69°02'27"W 33.83 FEET (L17) TO THE SOUTHERLY RIGHT OF WAY LINE OF PLASTER CREEK BOULEVARD; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING 7 COURSES: 40.41 FEET ALONG A 170.00 FOOT RADIUS CURVE TO THE LEFT, THE LONG CHORD OF WHICH BEARS S82°11'44"E 40.32 FEET (C1); THENCE N89°48'46"E 169.29 FEET (L18); THENCE SOUTHEASTERLY 47.60 FEET ALONG A 70.00 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS S68°47'49"E 46.69 FEET (C2); THENCE S51°13'38"E 120.10 FEET (L19); THENCE SOUTHEASTERLY 111.50 FEET ALONG A 130.05 FOOT RADIUS CURVE TO THE LEFT, THE LONG CHORD OF WHICH BEARS S73°26'40"E 108.12 FEET (C3); THENCE N79°30'42"E 287.70 FEET (L20); THENCE N80°10'16"E 382.97 FEET (L21) TO THE POINT OF BEGINNING. (27199 SQUARE FEET)

\*SEE SHEET 1 FOR SKETCH

**Prein&Newhof**  
 Engineers-Surveyors-Environmental-Laboratory  
 3355 Evergreen Drive NE  
 Grand Rapids, MI 49525  
 www.preinnewhof.com  
 T: (616) 364-8491  
 F: (616) 364-6955  
 info@preinnewhof.com

CLIENT:  
 CITY OF WYOMING  
 2600 BURLINGAME AVE.  
 WYOMING, MI 49509

LOCATED IN : SECTION 12  
 TOWN 06 NORTH, RANGE 12 WEST  
 CITY OF WYOMING,  
 KENT COUNTY, MICHIGAN  
 Date : 08/11/2021  
 Project No. 2200527  
 PAGE 2 OF 2

# EASEMENT SKETCH

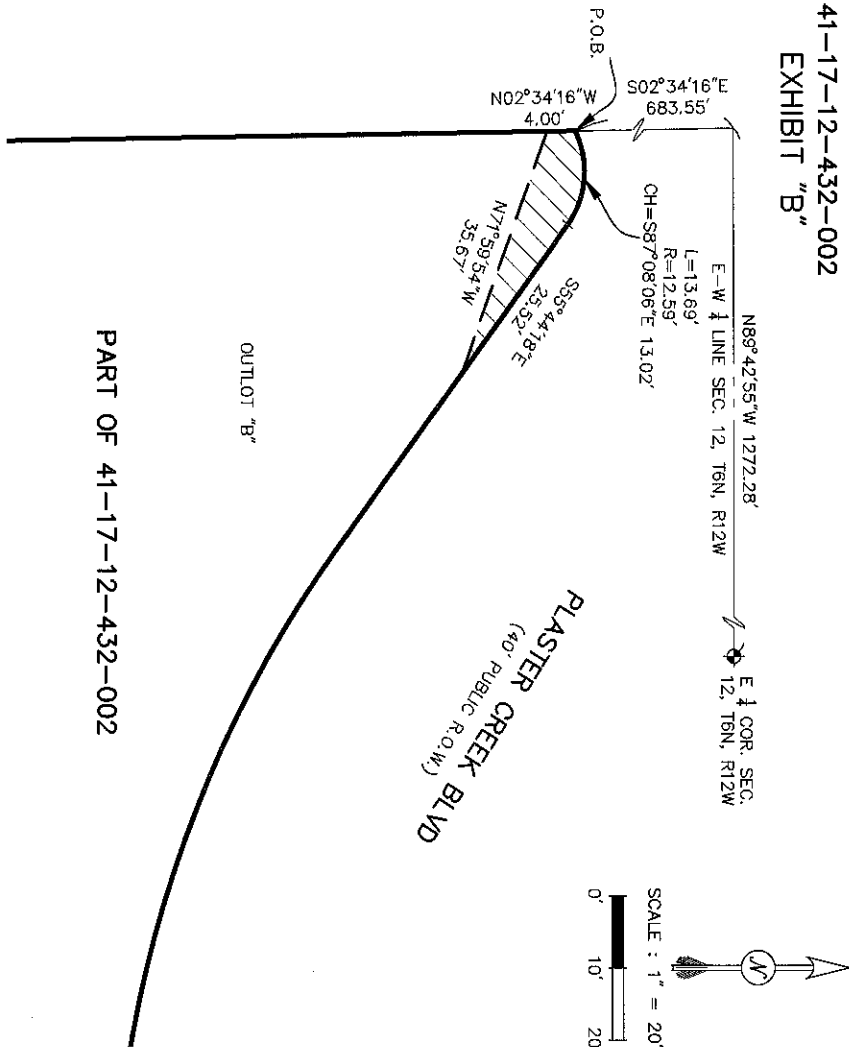
## 41-17-12-432-002

### EXHIBIT "B"

SUBJECT PARCEL (TAX DESCRIPTION)  
 OUTLOTS "B" AND "C" OF PLASTER CREEK BOULEVARD  
 ADDITION TO THE CITY OF GRAND RAPIDS, SECTION 12,  
 T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY,  
 MICHIGAN; ALSO THE SOUTHWESTERLY 20.00 FEET OF  
 THAT PART OF THE VACATED PORTION OF PLASTER  
 CREEK BOULEVARD ADJOINING OUTLOT "C" ON THE  
 NORTH.

EASEMENT DESCRIPTION  
 COMMENCING AT THE EAST 1/4 CORNER OF SECTION 12,  
 T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY,  
 MICHIGAN; THENCE N89°42'55"W ALONG THE EAST-WEST  
 1/4 LINE OF SAID SECTION 1272.28 FEET TO THE EAST  
 RIGHT OF WAY LINE OF BUCHANAN AVENUE; THENCE  
 S02°34'16"E ALONG SAID RIGHT OF WAY LINE 683.55  
 FEET TO THE SOUTH RIGHT OF WAY LINE OF PLASTER  
 CREEK BOULEVARD AND THE POINT OF BEGINNING;  
 THENCE SOUTHEASTERLY 13.69 FEET ALONG SAID RIGHT  
 OF WAY LINE ON A 12.59 FOOT RADIUS CURVE TO THE  
 RIGHT; THE LONG CHORD OF WHICH BEARS S87°08'06"E  
 13.02 FEET; THENCE CONTINUING ALONG SAID SOUTH  
 RIGHT OF WAY LINE S55°44'18"E 25.52 FEET; THENCE  
 N71°59'54"W 35.67 FEET TO THE EAST RIGHT OF WAY  
 LINE OF BUCHANAN AVENUE; THENCE N02°34'16"W  
 ALONG SAID LINE 4.00 FEET TO THE POINT OF  
 BEGINNING. (170 SQUARE FEET)

BUCHANAN AVENUE  
 (PUBLIC R.O.W.)



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 Grand Rapids, MI 49525  
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 T: (616) 364-8491  
 F: (616) 364-6955  
 info@preinnewhof.com

CLIENT:  
 CITY OF WYOMING  
 2600 BURLINGAME AVE.  
 WYOMING, MI 49509

LOCATED IN: SECTION 12  
 TOWN 06 NORTH, RANGE 12 WEST  
 CITY OF WYOMING,  
 KENT COUNTY, MICHIGAN  
 Date: 08/11/2021  
 Project No. 2200527  
 PAGE 1 OF 1

**CITY OF WYOMING  
TEMPORARY PERMIT**  
Parcel No. 41-17-12-432-002

The Grantor, **The City of Grand Rapids**, a Michigan municipal corporation, whose address is 300 Monroe Avenue, NW, Grand Rapids, MI 49503

**DOES HEREBY GRANT AND CONVEY TO:**

**CITY OF WYOMING**, a Michigan Municipal corporation, whose address is 1155 28<sup>th</sup> Street, SW, Wyoming, Michigan 49509 a Temporary Permit to change existing land contours, to remove and/or install trees and vegetation, and to construct and/or reconstruct side-slopes, service walks, sidewalks, driveways, parking lots, curb and gutter, public and private utilities, drainage facilities, lighting facilities, and other facilities as required for the Plaster Creek Boulevard Project. All areas disturbed by the work in the Temporary Permit area will be properly restored. The Temporary Permit area is located on property in the City of Wyoming, County of Kent, State of Michigan, as follows:

**See Exhibit A attached hereto for the Temporary Permit Area  
and Temporary Permit Legal Description (A Portion of Parcel No. 41-17-12-432-002)**

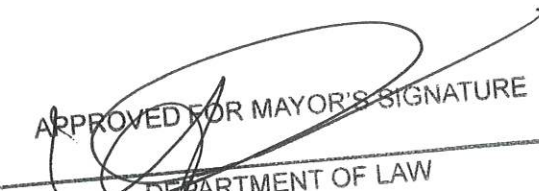
The Temporary Permit as referenced herein is granted and conveyed for the full consideration of **Less than One Hundred Dollars and No Cents (\$100.00)**.

The Temporary Permit, including all rights granted or inferred, shall terminate upon completion of the Plaster Creek Boulevard Project, including restoration of the Temporary Permit Area.

**IN WITNESS, WHEREOF**, the undersigned have hereunto set their hand this day and year as referenced herein.

**DATED:** \_\_\_\_\_

**Approved as a form:**

  
APPROVED FOR MAYOR'S SIGNATURE  
DEPARTMENT OF LAW

\_\_\_\_\_  
**Attorney for the City of Wyoming**

**GRANTOR:**  
**The City of Grand Rapids**

By:  Rosalynn Bliss

Its: Mayor

**ATTEST**

  
**City Clerk**

Prepared by and return to:  
Deborah S. Poeder  
Land Matters, LLC  
11230 Tallmadge Woods Drive  
Grand Rapids, Michigan 49534

Legal Description prepared by:

Prein & Newhof  
3355 Evergreen Drive, NE  
Grand Rapids, Michigan 49525

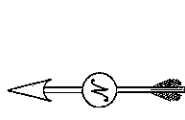
# TEMPORARY EASEMENT SKETCH 41-17-12-432-002 EXHIBIT "A"

Line Table		
Line #	Length	Direction
L1	194.26	S85°39'15"W
L2	22.59	N51°32'54"W
L3	156.21	S80°13'08"W
L4	135.52	S81°59'57"W
L5	89.01	S79°44'53"W
L6	71.93	S82°19'42"W
L7	20.89	S86°55'38"W

Line Table		
Line #	Length	Direction
L8	68.23	N85°08'02"W
L9	104.62	N66°00'53"W
L10	97.25	N65°04'46"W
L11	92.27	N74°27'30"W
L12	63.37	N86°14'42"W
L13	33.83	N69°02'27"W
L14	18.00	S01°54'38"E

Line Table		
Line #	Length	Direction
L15	91.61	S70°45'09"E
L16	93.55	S83°27'05"E
L17	205.10	S62°37'51"E
L18	164.06	N84°00'40"E
L19	106.75	N79°34'12"E
L20	154.37	N84°32'43"E
L21	153.02	N81°30'35"E
L22	193.66	N85°28'44"E
L23	2.95	N03°00'00"W

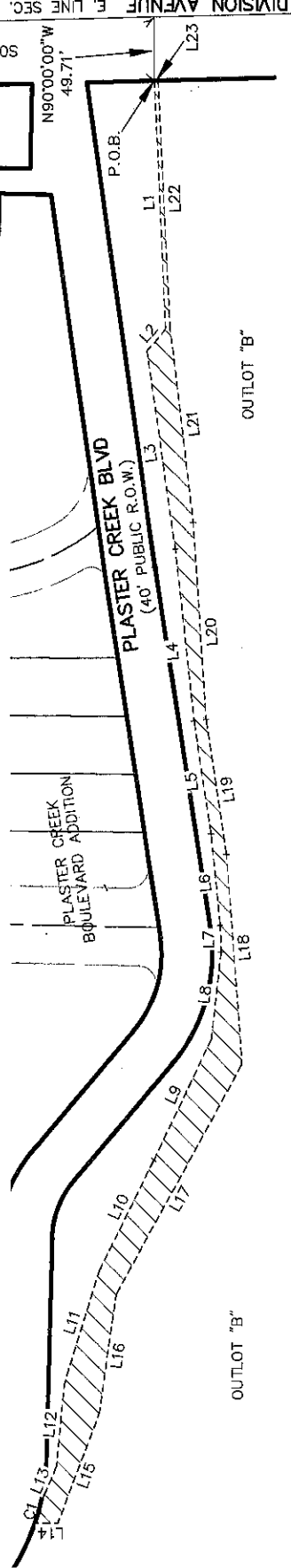
Curve Table			
Curve #	Length	Radius	Chord
C1	13.88	170.00	N74°57'27"W 13.87'



SCALE : 1" = 100'

E. 1/2 COR.  
SEC. 12,  
T6N, R12W

S33°00'00"E  
796.95'  
N90°00'00"W  
49.71'



\*SEE SHEET 2 FOR DESCRIPTIONS

**Prein & Newhof**  
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CLIENT:  
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WYOMING, MI 49509

LOCATED IN : SECTION 12  
TOWN 06 NORTH, RANGE 12 WEST  
CITY OF WYOMING,  
KENT COUNTY, MICHIGAN  
Date : 08/23/2021  
Project No. 2200527  
PAGE 1 OF 2



# TEMPORARY EASEMENT SKETCH

41-17-12-432-002

EXHIBIT "A"

## SUBJECT PARCEL (TAX DESCRIPTION)

OUTLOTS "B" AND "C" OF PLASTER CREEK BOULEVARD ADDITION TO THE CITY OF GRAND RAPIDS, SECTION 12, T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY, MICHIGAN: ALSO THE SOUTHWESTERLY 20.00 FEET OF THAT PART OF THE VACATED PORTION OF PLASTER CREEK BOULEVARD ADJOINING OUTLOT "C" ON THE NORTH.

## EASEMENT DESCRIPTION

COMMENCING AT THE EAST  $\frac{1}{4}$  CORNER OF SECTION 12, T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY, MICHIGAN: THENCE S03°00'00"W ALONG THE EAST LINE OF SAID SECTION 796.95 FEET; THENCE N90°00'00"W 49.71 FEET TO THE WEST RIGHT OF WAY LINE OF DIVISION AVENUE, AND THE POINT OF BEGINNING; THENCE S85°39'15"W 194.26 FEET (L1); THENCE N51°32'54"W 22.59 FEET (L2); THENCE S80°13'08"W 156.21 FEET (L3); THENCE S81°59'57"W 135.52 FEET (L4); THENCE S79°44'53"W 89.01 FEET (L5); THENCE S82°19'42"W 71.93 FEET (L6); THENCE S86°55'38"W 20.89 FEET (L7); THENCE N85°08'02"W 68.23 FEET (L8); THENCE N66°00'53"W 104.62 FEET (L9); THENCE N65°04'46"W 97.25 FEET (L10); THENCE N74°27'30"W 92.27 FEET (L11); THENCE N86°14'42"W 63.37 FEET (L12); THENCE N69°02'27"W 33.83 FEET (L13) TO THE SOUTHERLY RIGHT OF WAY LINE OF PLASTER CREEK BOULEVARD; THENCE NORTHWESTERLY ALONG SAID SOUTH RIGHT OF WAY LINE 13.88 FEET ALONG A 170.00 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS N74°57'27"E 13.87 FEET (C1); THENCE S01°54'38"E 18.00 FEET (L14); THENCE S70°45'09"E 91.61 FEET (L15); THENCE S83°37'05"E 93.55 FEET (L16); THENCE S62°37'51"E 205.10 FEET (L17); THENCE N84°00'40"E 164.06 FEET (L18); THENCE N79°34'12"E 106.75 FEET (L19); THENCE N84°32'43"E 154.37 FEET (L20); THENCE N85°28'44"E 193.66 FEET (L21); THENCE N85°28'44"E 193.66 FEET (L22) TO THE WESTERLY RIGHT OF WAY LINE OF DIVISION AVENUE; THENCE N03°00'00"W 2.95 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING. (18655 SQUARE FEET)

\*SEE SHEET 1 FOR SKETCH

**Prein & Newhof**  
Engineers • Surveyors • Environmental • Laboratory

3355 Evergreen Drive NE  
Grand Rapids, MI 49525  
www.preinnewhof.com

t. (616) 364-8491  
f. (616) 364-6955  
info@preinnewhof.com

CLIENT:  
CITY OF WYOMING  
2600 BURLINGAME AVE.  
WYOMING, MI 49509

LOCATED IN : SECTION 12  
TOWN 06 NORTH, RANGE 12 WEST  
CITY OF WYOMING  
KENT COUNTY, MICHIGAN  
Date : 08/23/2021  
Project No. 2200527  
PAGE 2 OF 2

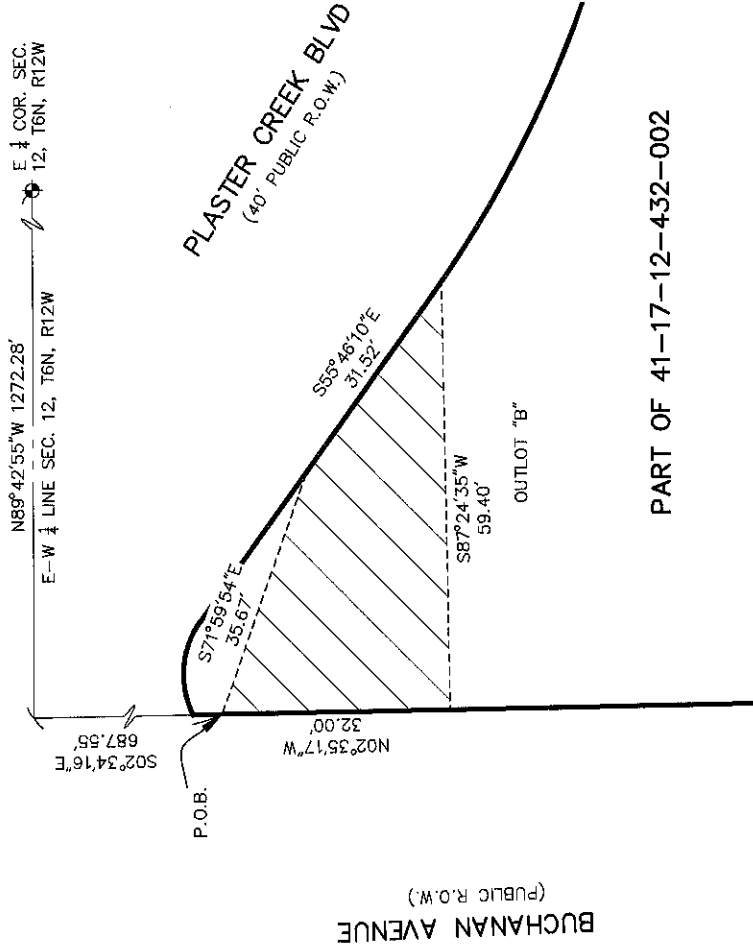
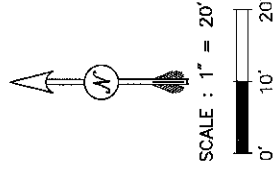
# TEMPORARY EASEMENT SKETCH

41-17-12-432-002

EXHIBIT "B"

SUBJECT PARCEL (TAX DESCRIPTION)  
OUTLOTS "B" AND "C" OF PLASTER CREEK BOULEVARD  
ADDITION TO THE CITY OF GRAND RAPIDS, SECTION 12,  
T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY,  
MICHIGAN. ALSO THE SOUTHWESTERLY 20.00 FEET OF  
THAT PART OF THE VACATED PORTION OF PLASTER  
CREEK BOULEVARD ADJOINING OUTLOT "C" ON THE  
NORTH.

TEMPORARY EASEMENT DESCRIPTION  
COMMENCING AT THE EAST 1/4 CORNER OF SECTION 12,  
T6N, R12W, WYOMING TOWNSHIP, KENT COUNTY,  
MICHIGAN; THENCE N89°42'55"W ALONG THE EAST-WEST  
1/4 LINE OF SAID SECTION 1272.28 FEET TO THE EAST  
RIGHT OF WAY LINE OF BUCHANAN AVENUE; THENCE  
S02°34'16"E ALONG SAID RIGHT OF WAY LINE 687.55  
FEET TO THE POINT OF BEGINNING; THENCE S71°59'54"E  
35.67 FEET TO THE SOUTH RIGHT OF WAY LINE OF  
PLASTER CREEK BOULEVARD; THENCE S55°46'10"E  
ALONG SAID RIGHT OF WAY LINE 31.52 FEET; THENCE  
S87°24'35"W 59.40 FEET TO THE EAST RIGHT OF WAY  
LINE OF BUCHANAN AVENUE; THENCE N02°35'17"W  
ALONG SAID RIGHT OF WAY LINE 32.00 FEET TO THE  
POINT OF BEGINNING. (1112 SQUARE FEET)



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3355 Evergreen Drive NE t. (616) 364-8491  
Grand Rapids, MI 49525 f. (616) 364-5955  
www.preinnewhof.com info@preinnewhof.com

CLIENT:  
CITY OF WYOMING  
2600 BURLINGAME AVE.  
WYOMING, MI 49509

LOCATED IN: SECTION 12  
TOWN 06 NORTH, RANGE 12 WEST  
CITY OF WYOMING,  
KENT COUNTY, MICHIGAN  
Date: 08/23/2021  
Project No. 2200527  
PAGE  
1 OF 1

**CITY OF WYOMING**  
**ESTIMATE OF JUST COMPENSATION**

**PROJECT:** Plaster Creek Boulevard

**SITE DATA:**

Permanent Parcel No.: 41-17-12-432-002

Parcel: The City of Grand Rapids

Land Use: Commercial Size: 4.726 Ac (total)

Address 200 Plaster Creek Blvd, Wyoming, MI 49507

Zoning: 201

**ACQUISITION DESCRIPTION:**

Value obtained from a Market Study by Integra Realty Resources – Grand Rapids.

**Summary of Costs:**

Easements

Irregular pieces of property located adjacent to Plaster Creek Boulevard as shown on sketch.

Area: 170 sft

Area: 27,199 sft

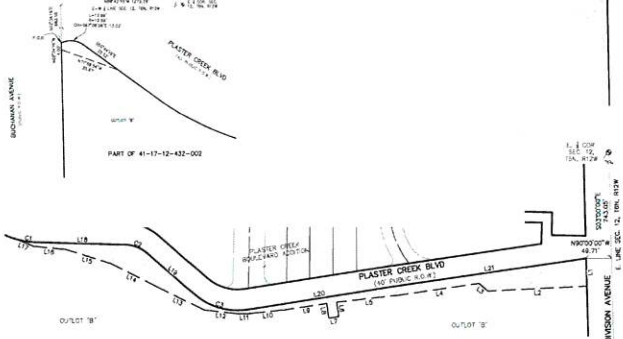
Temporary Permits

Irregular pieces of property located adjacent to Easements listed above and as shown on sketch.

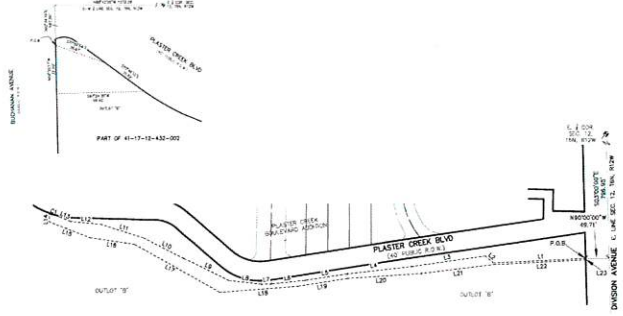
Area: 1,112 sft

Area: 18,655 sft

**SKETCH NON-MOTORIZED TRAIL EASEMENTS:**



**SKETCH TEMPORARY PERMITS:**



**COMPUTATION OF VALUE:**

**LAND ACQUISITION, EASEMENTS**

Easements - Donation

\$ 0.00

**LAND ACQUISITION, TEMPORARY PERMITS**

Temporary Permits - Donation

\$ 0.00

**REMARKS:**

\$ 0.00

Signed:

*Deborah Poeder*  
Land Matters, llc  
Deborah S. Poeder

for information call 616.791.9805

Agreed to by:

The City of Grand Rapids

By: *Rosalynn Bliss*  
Its: Mayor

**ATTEST**

*[Signature]*  
City Clerk

*[Signature]*  
APPROVED FOR MAYOR'S SIGNATURE  
DEPARTMENT OF LAW

0631LPA (11/20)

# DONATION to LOCAL PUBLIC AGENCY (LPA)

This information is required by the LPA in order for a property owner to donate property.

PROPERTY OWNER(S)

The City of Grand Rapids

ADDRESS (Owner & subject property if different)

300 Monroe Avenue, NW

CITY

Grand Rapids

STATE

MI

ZIP CODE

49503

Right(s) to be acquired:

☐

Fee (Total Take)

☐

Fee (Partial Take)

☒

Easement (Permanent)

☒

Consent/Permit (Temporary)

APPROVED FOR MAYOR'S SIGNATURE  
DEPARTMENT OF LAW

Just Compensation

\$ 0

Just Compensation  
determined by:

☐

Market Study and/or Valuation Analysis

☐

Appraisal by 3<sup>rd</sup> party

The undersigned owner(s) of the subject property identified below agrees with the following statements:

- I/We have been informed and fully understand that I/we have the right to receive just compensation for the subject property.
- I/We have been informed and fully understand that by signing this document, I/we are agreeing to donate the subject property in lieu of just compensation.
- I/We agree that the decision to donate the subject property was made without undue influences or coercive action of any nature.
- I/We agree to donate said property and waive just compensation and waive the right to an appraisal and property inspection.

OWNERS SIGNATURE

*Gregory Blin* *John*

OWNERS SIGNATURE

DATE

11-19-2021

DATE

LPA APPROVAL

DATE

JOB NUMBER

PARCEL

41-17-12-432-002

NAME

## CITY OF WYOMING BUDGET AMENDMENT

**Date: December 20, 2021**

**Budget Amendment No. 050**

To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$10,000.00 of additional budgetary authority to provide funding for office furniture and supplies for the assistant city attorney office.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<b><u>General Fund</u></b>				
Attorney - Legal Services - Office Supplies				
101-210-21000-727.000	8,000.00	10,000.00		18,000.00
<hr/>				
Fund Balance/Working Capital (Fund 101)		-	10,000.00	
<hr/>				

Recommended: Kate Balfanz  
Senior Accountant

Cathy  
City Manager

Motion by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_  
that the General Appropriations Act for Fiscal Year 2021-2022 be amended by adoption of the  
foregoing budget amendment.

Motion carried: Yes \_\_\_\_\_, No \_\_\_\_\_

I hereby certify that at a \_\_\_\_\_ meeting of the Wyoming City Council duly held on  
\_\_\_\_\_ the foregoing budget amendment was approved.

\_\_\_\_\_  
City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF APPRECIATION TO LILLIAN VANDERVEEN  
FOR HER SERVICE AS A MEMBER OF THE BOARD OF REVIEW  
FOR THE CITY OF WYOMING

WHEREAS:

1. Lillian VanderVeen has served faithfully and effectively as a member of the Board of Review since January 11, 1999.

NOW, THEREFORE, BE IT RESOLVED:

1. Councilmembers and citizens of the City of Wyoming wish to express their deep appreciation to Lillian VanderVeen for her dedicated service as a member of the Board of Review.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF APPRECIATION TO JEFF BAKER FOR HIS SERVICE  
AS A MEMBER OF THE DOWNTOWN DEVELOPMENT AUTHORITY  
FOR THE CITY OF WYOMING

WHEREAS:

1. Jeff Baker has served faithfully and effectively as a member of the Downtown Development Authority since May 19, 2014.

NOW, THEREFORE, BE IT RESOLVED:

1. Councilmembers and citizens of the City of Wyoming wish to express their deep appreciation to Jeff Baker for his dedicated service as a member of the Downtown Development Authority.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF APPRECIATION TO NATHAN PELTZ FOR HIS SERVICE  
AS A MEMBER OF THE PARKS AND RECREATION COMMISSION  
FOR THE CITY OF WYOMING

WHEREAS:

1. Nathan Peltz has served faithfully and effectively as a member of the Parks and Recreation Commission since October 1, 2018.

NOW, THEREFORE, BE IT RESOLVED:

1. Councilmembers and citizens of the City of Wyoming wish to express their deep appreciation to Nathan Peltz for his dedicated service as a member of the Parks and Recreation Commission.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO REAPPOINT MEMBERS TO THE BOARD OF REVIEW  
FOR THE CITY OF WYOMING

WHEREAS:

1. The term of office for some members of the Board of Review expires on January 31, 2022.
2. It is the desire of the City Council that members be reappointed to serve on the Board of Review for the City of Wyoming.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council for the City of Wyoming, Michigan, does hereby reappoint the following named persons to serve on the Board of Review for the City of Wyoming for the terms so stated.

BOARD, COMMISSION OR COMMITTEE

TERM ENDING

Board of Review

Amanda Remo

01/31/25

Pamela Brenzing

01/31/25

James Hake

01/31/25

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes

No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO REAPPOINT MEMBERS TO THE GREATER WYOMING  
COMMUNITY RESOURCE ALLIANCE FOR THE CITY OF WYOMING

WHEREAS:

1. The term of office for some members of the Greater Wyoming Community Resource Alliance expires on January 1, 2022.
2. It is the desire of the City Council that members be reappointed to serve on the Greater Wyoming Community Resource Alliance for the City of Wyoming.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council for the City of Wyoming, Michigan, does hereby reappoint the following named persons to serve on the Greater Wyoming Community Resource Alliance for the City of Wyoming for the terms so stated.

BOARD, COMMISSION OR COMMITTEE

TERM ENDING

Greater Wyoming Community Resource Alliance

Kimberly Koster

01/01/25

Jennifer Franson

01/01/25

Gregory King

01/01/25

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO REAPPOINT REPRESENTATIVES TO THE  
WEST MICHIGAN REGIONAL PLANNING COMMISSION

WHEREAS:

1. The By-Laws and Rules of Procedure for the West Michigan Regional Planning Commission entitle the City of Wyoming to three (3) representatives and one (1) alternate representative to serve on the West Michigan Regional Planning Commission Board.

NOW, THEREFORE, BE IT RESOLVED:

1. That Principal Planner Nicole Hofert, Councilmember Sam Bolt, Citizen Representative Joseph Rizqallah and Alternate Representative Robert Postema be reappointed as the City's representatives for 2022.
2. That the City Clerk be directed to send a copy of this resolution to the West Michigan Regional Planning Commission.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                     No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO REAPPOINT KENT VANDERWOOD TO THE KENT COUNTY  
WASTE-TO-ENERGY ADVISORY COMMITTEE

WHEREAS:

1. The City of Wyoming is entitled to representation on the Kent County Waste-to-Energy Advisory Committee.
2. It is the desire of the Wyoming City Council to reappoint Councilmember Kent Vanderwood as a Wyoming representative to the Kent County Waste-to-Energy Advisory Committee.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council for the City of Wyoming, Michigan, does hereby reappoint Councilmember Kent Vanderwood as a member of the Kent County Waste-to-Energy Advisory Committee as the City's representative for 2022.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                     No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO REAPPOINT ROBERT POSTEMA AS A REPRESENTATIVE OF THE  
CITY OF WYOMING ON THE INTERURBAN TRANSIT PARTNERSHIP BOARD

WHEREAS:

1. The term of Robert Postema as a Wyoming representative on the Interurban Transit Partnership Board, expires on December 31, 2021.
2. It is the desire of the Wyoming City Council to reappoint Robert Postema as a Wyoming representative to the Interurban Transit Partnership Board.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council for the City of Wyoming, Michigan, does hereby designate Robert Postema as a representative of the City of Wyoming on the Interurban Transit Partnership Board for a two-year term expiring December 31, 2023.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO CONFIRM THE APPOINTMENT OF KEITH MORGAN  
AS A MEMBER OF THE BOARD OF DIRECTORS OF THE CITY OF WYOMING  
DOWNTOWN DEVELOPMENT AUTHORITY

WHEREAS:

1. Keith Morgan has submitted an application requesting appointment to the Downtown Development Authority for the City of Wyoming.
2. A vacancy exists in an unexpired term ending January 1, 2023 on the Downtown Development Authority.
3. Mayor Jack Poll has recommended that Keith Morgan be appointed as a member of the Board of Directors of the City of Wyoming Downtown Development Authority.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council for the City of Wyoming, Michigan, does hereby confirm the appointment of Keith Morgan as a member of the Board of Directors of the City of Wyoming Downtown Development Authority for the unexpired term ending January 1, 2023.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT GRANT FUNDING RECEIVED FROM THE U.S.  
DEPARTMENT OF JUSTICE OFFICE OF COMMUNITY ORIENTED  
POLICING SERVICES (COPS OFFICE) ENTITLED  
“2021 FY COPS OFFICE HIRING PROGRAM SOLICITATION”

WHEREAS:

1. The City of Wyoming Department of Public Safety applied for and was selected to receive the US DOJ Office of Community Oriented Policing Services (COPS Office) grant entitled 2021 FY COPS Office Hiring Program Solicitation in the amount of \$750,000 to be used toward the hiring of 6 police officers over a 3-year grant period (award number 15JCOPS-21-GG-03424-UHPX).
2. The City Council for the City of Wyoming would accept \$750,000 in grant funds designated for the hiring of 6 police officer positions and allow the City Manager and the Public Safety Chief to sign the award document to formally accept the grant.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Wyoming accepts the US DOJ Office of Community Oriented Policing Services (COPS Office) grant entitled 2021 FY COPS Office Hiring Program Solicitation in the amount of \$750,000.
2. That Police Captain Timothy Pols serve as the Grant Administrator responsible for the programmatic grant requirements and semi-annual progress reports to be submitted to the System for Award Management (SAM).
3. That Amy Berridge serve as the Financial Manager responsible for the quarterly financial reports to be submitted to the System for Award Management (SAM).
4. That the attached budget amendment is approved.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried            Yes  
                                     No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:  
Budget Amendment

Resolution No. \_\_\_\_\_

# CITY OF WYOMING BUDGET AMENDMENT

**Date: December 20, 2021**

**Budget Amendment No. 049**

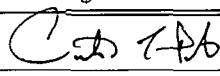
To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$297,457.68 of additional budgetary authority to provide funding for first year expenses of the FY 2021 COPS grant and recognize the associated revenue from the Office of Community Oriented Policing Services (the COPS Office) per the attached resolution.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<b><u>General Fund</u></b>				
Federal Grants - COPS Hiring Grant				
101-509-050 COPS Hiring Program Revenue	-	223,093.27		223,093.27
Police - Patrol - Salaries- Uniform				
101-305-31500-705.000 COPS Hiring Prog.Exp	5,051,960.00	193,440.00		5,245,400.00
Police - Patrol - FICA				
101-305-31500-715.000 COPS Hiring Prog.Exp	430,318.00	14,798.16		445,116.16
Police - Patrol - Pension DC Plan				
101-305-31500-718.100 COPS Hiring Prog.Exp	247,132.00	15,475.20		262,607.20
Police - Patrol - Pension Retiree Health DC Plan				
101-305-31500-718.200 COPS Hiring Prog.Exp	108,989.00	7,974.72		116,963.72
Police - Patrol - Hospitalization Insurance				
101-305-31500-716.000 COPS Hiring Prog.Exp	1,155,381.00	61,254.72		1,216,635.72
Police - Patrol - Life Insurance				
101-305-31500-717.000 COPS Hiring Prog.Exp	5,735.00	222.45		5,957.45
Police - Patrol - Workers Comp. Insurance				
101-305-31500-719.000 COPS Hiring Prog.Exp	117,300.00	4,255.68		121,555.68
Police - Patrol - Insurance Liability				
101-305-31500-910.000 COPS Hiring Prog.Exp	96,664.00	36.75		96,700.75
Fund Balance/Working Capital (Fund 101)		\$ -	\$ 74,364.41	

Recommended: 

Senior Accountant



City Manager

Motion by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_ that the General Appropriations Act for Fiscal Year 2021-2022 be amended by adoption of the foregoing budget amendment.

Motion carried: Yes \_\_\_\_\_, No \_\_\_\_\_

I hereby certify that at a \_\_\_\_\_ meeting of the Wyoming City Council duly held on \_\_\_\_\_ the foregoing budget amendment was approved.

\_\_\_\_\_  
City Clerk



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE, AUTHORIZE AND DIRECT THE MAYOR  
AND CITY CLERK TO SIGN AN INDIGENT DEFENSE COLLABORATION  
CONTRACT

WHEREAS:

1. Wyoming as the court funding unit for the 62-A District Court, Walker and Grandville as the court funding units for the 59<sup>th</sup> District Court, and Kentwood as the court funding unit for the 62-B District Court collaboratively worked to address their respective obligations under the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 *et seq.* ("PA 93"), securing a single grant from the Michigan Indigent Defense Commission ("MIDC") for use, in conjunction with their respective "local shares," to fund indigent defense services and administration.
2. The cities earlier this year formed an authority to be their MIDC grant recipient.
3. In later communications with MIDC staff, the cities have decided to take a different approach with Wyoming serving as their single MIDC grant recipient and with Wyoming employing an indigent defense administrator to administer the MIDC grant and indigent defense services in all the courts.

NOW, THEREFORE, BE IT RESOLVED:

1. The Indigent Defense Administration Contract (the Contract") is approved in substantially the form attached as Exhibit A, subject to changes approved by the Mayor and City Attorney, and the Mayor and City Clerk are authorized and directed to sign the Contract for the City.
2. All resolutions and parts of resolutions are, to the extent any conflict with this resolution, rescinded.

Moved by Councilmember/Commissioner:

Seconded by Councilmember/Commissioner:

Motion Carried        Yes  
                                  No

I certify that this resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular meeting held on December 20, 2021.

---

Kelli A. VandenBerg, Wyoming City Clerk

**MEMORANDUM**

**City Attorney** | 1155 28th St SW, Wyoming, MI 49509  
616.530.3194 | Fax 616.261.7103 | [wyomingmi.gov](http://wyomingmi.gov)

To: Grandville City Council, Kentwood City Commission, Walker City Commission, and Wyoming City Council

From: Scott Smith, Wyoming City Attorney

Date: December 13, 2021

Subject: Rethinking Indigent Defense Services

---

The Michigan Indigent Defense Commission Act, 2013 PA 93 (**MIDC Act**), was enacted to provide indigent persons charged with crimes representation by competent criminal defense attorneys. The MIDC Act provides that local court funding units, including our cities, contribute only the amounts they spent for indigent defense before MIDC Act enactment (local shares) and additional funding for indigent defense services is provided by Michigan Indigent Defense Commission (**MIDC**) grants.

The MIDC proposed 8 indigent defense standards, 5 of which have been approved by its supervising agency, the Department of Licensing and Regulatory Affairs (**LARA**). Those standards require that selection and oversight of indigent criminal defense counsel be performed by an attorney who is independent from courts and any prosecutor's office. Grant terms also generally prohibit reimbursements to local governments for time expended in grant administration by existing city staff. For MIDC FY 2020-21, to minimize costs and unreimbursed staff time expended in annual grant applications, quarterly reporting, contracting with criminal defense attorneys, addressing indigent defense concerns, etc., our cities collaborated on a single grant for indigent criminal defense services in the 3 courts and with combined contracts with attorneys to provide those services.

For several reasons (addressed in previous communications), earlier this year we formed an authority (a separate public body corporate), intending it to be the MIDC grant recipient and to administer MIDC grants and indigent defense services. Communication with MIDC staff prior to taking that action failed elicit staff concerns that arose when our annual grant application made it clear the authority would be the grant recipient. Subsequently, MIDC commissioners requested an attorney general's opinion (that has not yet been provided) on whether an authority can be a MIDC grant recipient.

To resolve that issue, to relieve Wyoming (and other cities') staff of indigent defense related responsibilities, eliminate possible conflicts of interest caused by my involvement in this matter, improve the grant and indigent defense administration, and address added responsibilities with implementation of the remaining MIDC standards, MIDC staff members suggested hiring an attorney to serve as the full-time indigent defense administrator for our 4 cities and 3 courts. Under this concept, Wyoming would employ the administrator and MIDC grant funds would pay all costs associated with that position and would provide some additional funding for related overhead that would offset costs associated with accounting responsibilities. While not an ideal concept, Wyoming is willing to serve that role.

The accompanying resolution and contract would formalize this arrangement and dissolve the authority. The administrator would be a Wyoming employee for all purposes and in all ways. This ensures the other 3 cities cannot be viewed as co-employers for employment or liability purposes. Yet, the contract provides for essentially the same board as was created for the authority to provide administrator oversight by and accountability to all 4 cities. We have an individual in mind to serve as the administrator and foresee that he would start that work in January 2022 after transitioning his current work.

We expect the MIDC will approve this arrangement on an interim basis at its December 21, 2021 meeting and that it will formally approve it for the remainder of the state's FY 22 (ending September 30, 2022) at its February 2022 meeting.

community • safety • stewardship

CITY COUNCIL

Sheldon DeKryger

John Fitzgerald

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

**Jack A. Poll, Mayor**

**Exhibit A**  
**INDIGENT DEFENSE COLLABORATION CONTRACT**

## INDIGENT DEFENSE COLLABORATION CONTRACT

This Indigent Defense Collaboration Contract is made as of December 21, 2021 among the City of Grandville, 3195 Wilson Ave SW, Grandville, MI 49418 (**Grandville**) and the City of Walker, 4243 Remembrance Rd NW, Walker, MI 49534 (**Walker**), as the court funding units for the 59<sup>th</sup> District Court, the City of Wyoming, 1155 28<sup>th</sup> St SW, PO Box 905, Wyoming, MI 49509-0905 (**Wyoming**), as the court funding unit for the 62-A District Court, and the City of Kentwood, 4900 Breton Ave SE, PO Box 8848, Kentwood, MI 49518 (**Kentwood**), as the court funding unit for the 62-B District Court (together the "**Cities**").

### RECITALS

A. Pursuant to the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 *et seq.* (**MIDC Act**), the Michigan Indigent Defense Commission (**MIDC**), under the aegis of the Michigan Department of Licensing and Regulatory Affairs (**LARA**), promulgated minimum standards for indigent criminal defense (**MIDC Standards**) and provides grants to court funding units for funds exceeding amounts each court funding unit historically provided for indigent criminal defense (commonly known as "**local shares**") that are needed to implement those standards (**MIDC grants**).

B. For the state's 2019-20 and 2020-21 fiscal years each of the Cities received separate MIDC grants to fund the respective indigent criminal defense services in the 59<sup>th</sup>, 62-A and 62-B District Courts (**Courts**) and contracted separately with indigent criminal defense service providers for those services.

C. In 2020, the Cities and Courts signed a Memorandum of Collaboration for Indigent Defense Services providing for a joint FY 2020-21 MIDC grant to fund indigent criminal defense services for defendants in the Courts.

D. The Cities initially formed an authority (*i.e.*, a separate public body corporate) as their joint FY 2021-22 MIDC grant recipient intending it to undertake their duties and obligations and exercise their authority with respect to MIDC grants and providing indigent criminal defense services in the Courts, but the MIDC did not approve the corresponding proposed compliance plan and cost analysis.

E. With information recently provided by MIDC staff members, the Cities decided that more formally continuing their previous arrangement (for the FY 2021-22 MIDC grant) with Wyoming continuing to be the sole MIDC grant recipient and with Wyoming's employing an attorney to serve as full-time indigent defense service administrator will better meet the Cities' and Courts' ongoing needs, especially as more MIDC standards are implemented.

F. The parties are therefore entering into this Contract as a joint venture under the municipal partnership act, 2011 PA 258, MCL 124.111 *et seq.*, to delegate to and authorize and empower Wyoming to exercise and perform on each and all their behalf's rights, duties, and obligations under the MIDC Act and for providing indigent criminal defense services in the Courts.

### TERMS AND CONDITIONS

For the consideration provided within or required by this Contract, the Cities agree:

1. **Wyoming as Agent and Fiduciary.** Wyoming will serve as the single MIDC grant recipient and the agent and fiduciary for all the Cities for MIDC grants.

A. As the agent and fiduciary, Wyoming will use its reasonable best efforts to do all the following:

1. Submit grant applications (including proposed compliance plans and cost analyses),
2. Sign grant contracts,
3. Administer grants,
4. Ensure grant compliance,
5. Select and sign contracts with indigent defense attorneys and firms,
6. Assign defense attorneys,

7. Account for all funds (grant funds, local shares, and any other funds) in accordance with MIDC, legal, Michigan Department of Treasury, and other requirements and with generally accepted governmental accounting practices,
8. Include the funds in Wyoming's annual audit,
9. Employ, consistent with Wyoming's human resources policies and practices, any personnel to be employed under MIDC approved compliance plans and cost analyses,
10. File quarterly reports and other documents as needed with the MIDC,
11. Implement MIDC standards as they take effect,
12. Review and approve requests for, engage, review, and approve bills from, and otherwise provide investigators, experts, social workers and other professionals in accordance with applicable laws, court rules, MIDC requirements and guidelines, etc.,
13. Review and approve bills from criminal defense attorneys,
14. Make payments from funds in accordance with MIDC requirements, applicable law, and Wyoming policies,
15. Review and approve other MIDC approved expenses, such as those submitted by one or more of the Cities for capital improvements, equipment, or other reimbursements,
16. Address indigent criminal defense issues in any of the Courts raised by court personnel, judges, criminal defense attorneys, prosecutors, criminal defendants, or others,
17. Observe the Courts for compliance with MIDC requirements,
18. Make indigency determinations and/or review compliance with the indigency standard and assigned counsel requirements,
19. Ensure retained indigent criminal defense counsel conduct timely initial interviews,
20. Ensure retained criminal defense counsel comply with MIDC standards and requirements (including educational and training requirements) and with Michigan Rules of Professional Conduct (**MRPC**),
21. Update the Cities and, as needed, other parties on legal and other developments affecting indigent criminal defense services in the Courts, and
22. Perform any other tasks, duties, responsibilities or obligations regarding oversight and administration of indigent criminal defense services in the Courts as required by the MIDC.

B. The Cities individually and jointly authorize and empower Wyoming to act for each and for all the Cities for all purposes under the MIDC Act and under MIDC grant contracts including, without limitation, providing and performing all the tasks, duties, responsibilities, and obligations listed in subsection 1.A.

C. The Cities understand and agree that, as provided in section 2 of this Contract, Wyoming's performance of its role as grant recipient and fiduciary and the tasks, duties, responsibilities, and obligations as provided in subsection 1.A is limited to what can be done within the funding provided by MIDC grants and the local shares.

D. The Cities understand and agree that, except for the tasks, duties, and obligations listed in paragraphs 1.A.7, 1.A.8, and 1.A.14 to be performed by Wyoming's Finance Department staff, Wyoming will employ an individual to serve as the full-time indigent defense administrator for the Cities and the Courts in accordance with section 3 of this Contract (**Administrator**) who will be sole individual to perform the tasks, duties, responsibilities, and obligations as provided in subsection 1.A and exercise the authority and powers granted under subsection 1.B of this Contract. This delegation is made to accomplish several objectives, among which are:

1. The Administrator is a position recognized by the MIDC under changes to the FY 2020-21 compliance plan and cost analysis approved on December 21, 2021 and in the proposed FY 2021-22 compliance plan and cost analysis to be submitted to the MIDC on or before December 22, 2021, to be

considered by the MIDC at its February 2022 meeting. Therefore, it is a position fully funded by MIDC grants and local shares. Costs of that position will not be paid from any Wyoming funds other than its local share. It has been a goal of the Cities to ensure indigent defense costs incurred by each of them does not exceed their respective local shares and to eliminate or minimize involvement by other members of the Cities' staffs.

2. Many of the tasks, duties, responsibilities, and obligations listed in subsection 1.A need to be performed by an attorney and it can be difficult to distinguish among those which do and do not require an attorney. Three of the four cities do not employ an attorney but contract individuals and/or law firms to provide needed legal services. While Wyoming employs its city attorney, its city attorney also provides or oversees city prosecution services making continued involvement of its city attorney in indigent defense activities a conflict of interest. Therefore, employment of an Administrator who works separately from other Wyoming legal staff avoids conflicts of interest or the appearance of possible conflicts of interest.

3. The Administrator should be addressing the indigent defense interests of all the Cities and all the Courts. The parties therefore established a board, as provided in section 4 of this Contract, to regularly (at least quarterly) interact with the Administrator for purposes of communication and accountability.

4. Many of the tasks, duties, responsibilities, and obligations listed in subsection 1.A require interconnected, day-to-day observations, communications, decisions, and actions and could not be accomplished in a timely, consistent, or efficient basis, if they required consultation with, even without formal review and approval from, each of the Cities, the Courts, or other Wyoming staff.

2. **Funding and Finances.** Wyoming's obligations, duties, responsibilities, and actions under this Contract shall be funded solely by the local shares, by MIDC grants, and by other funding as may be made available to Wyoming to fund indigent criminal defense services in the Courts.

A. No later than the latter of (i) 10 days after the start of the state's fiscal year (currently, that would be October 10 of each year) or (ii) 10 days after Wyoming and MIDC have fully signed the MIDC grant agreement providing funds for that state fiscal year, each of the Cities shall transmit to Wyoming their respective local share for that fiscal year. This is the only funding commitment any of the Cities is making under this Contract. However, this does not preclude any of the Cities from providing additional funding should it be authorized by that City's governing body.

B. All funds currently held by Wyoming for indigent criminal defense services in the Courts shall continue to be held by Wyoming and used only for those purposes and in accordance with MIDC grant contracts, applicable law, and generally accepted governmental accounting practices.

3. **Indigent Defense Administrator.** To the extent provided under an MIDC-approved compliance plan and to the extent funded by MIDC grants and the local shares, Wyoming shall employ an attorney to serve as the Administrator for the Cities and the Courts in accordance with:

A. Wyoming will, in accordance with its human resources policies and practices and in its sole discretion, employ an individual to serve as the Administrator for the Cities and the Courts.

1. Wyoming intends that the Administrator be employed as an at-will employee serving at the pleasure of the Wyoming City Manager under an individual employment agreement with employee benefits like those of other individuals similarly employed by Wyoming.

2. In considering any employment actions related to the Administrator, the Wyoming City Manager may, but is not required to consult with the individuals serving on the indigent defense administration board (**IDAB**) formed under section 4 of this Contract. The City Manager shall consider information provided by the IDAB following its annual review of the Administrator's performance.

3. To be clear, the Administrator will be employed solely by Wyoming and Wyoming is solely responsible for the Administrator's employment terms and conditions. Wyoming is solely responsible for any compensation paid to, supervision of, and all personnel actions regarding the Administrator. Wyoming is solely responsible for payroll taxes and withholding. None of the other Cities shall have any obligation to, supervision of, or control of the Administrator.

B. Among the duties, obligations, and responsibilities of the Administrator are:

1. Preparing and filing quarterly MIDC reports,
  2. Preparing and filing annual MIDC grant applications including compliance plans and cost analyses,
  3. Annual budgeting in accordance with Wyoming's process,
  4. Reviewing and processing payment requests from the indigent defense fund comprised of MIDC grant funds and local shares,
  5. Administering indigent defense counsel contracts, including the current Kent County Office of the Defender (KCOD) contract and conflict counsel contracts, and, with IDAB approval, taking actions to terminate, amend, or renew such contracts as appropriate or enter into contracts with additional indigent defense attorneys,
  6. Verifying indigent defense counsel has had timely initial interviews with clients,
  7. Ensuring indigent defense attorneys meet education and training requirements,
  8. Observing, reviewing, evaluating, and, perhaps occasionally, mentoring indigent defense attorneys,
  9. Implementing the indigency standard and ensuring compliance with it,
  10. Observing courts for compliance with standards and court rules, and interacting with judges and court personnel as needed,
  11. Participating in Wyoming's annual audit of the program funds,
  12. Addressing indigent defense related issues and concerns raised by prosecutors, courts, clients, or others,
  13. Approving expert and investigator requests within the funds budgeted for them,
  14. Assigning cases to indigent defense attorneys (mostly conflict counsel),
  15. Monitoring MIDC developments, including MIDC agendas, staffing changes, etc.
  16. Proactively and as needed, interacting with MIDC staff,
  17. Attending MIDC meetings when appropriate,
  18. Updating the IDAB, indigent defense attorneys, court personnel, and others of changes in statutes, court rules or other law that may affect indigent defense services,
  19. Recommending to the IDAB changes in approaches, operations, etc. as may, in the Administrator's opinion, be needed, prudent, or beneficial,
  20. Preparing and ensuring posting of notices of IDAB meetings,
  21. Working with the IDAB chair to prepare IDAB agendas and supporting documents, and delivering them to IDAB members prior to IDAB meetings,
  22. Updating the IDAB as needed by e-mails, periodic written reports, or other means and
  23. Performing any other tasks or responsibilities needed to ensure indigent defense attorney services comply with applicable law, court rules, MIDC standards, the MIDC grant agreement, MRPC, and other applicable requirements.
- C. The IDAB will annually (no later than January 30 of each year) review the Administrator's performance in a manner the IDAB deems appropriate and provide the Wyoming City Manager a written report of its conclusions and any recommendations.
4. Board. To improve collaboration among the Cities and facilitate communication with and accountability of the Administrator, the IDAB is established.
- A. The IDAB shall be an 8-member board consisting of 2 members from each of the Cities appointed by its mayor and approved by its governing body. Except as provided below, all IDAB members' terms shall be 4-years and shall terminate on June 30.

1. One IDAB member from each of the Cities shall be its finance director or treasurer or that individual's designee. The Grandville and Kentwood appointees (Tammy Hopman and Tom Chase, respectively) under this subsection shall initially serve a 2-year term ending June 30, 2023. The Walker and Wyoming appointees (Daniel DeVries and Kate Balfourt, respectively) under this subsection shall initially serve a 4-year term ending June 30, 2025. In addition, the term of any person appointed under this provision shall terminate when that person is no longer an officer or employee of the appointing city.

2. The other IDAB member from each of the parties may be any other city officer or employee except no board member shall be any of the persons listed in subsections 4.A.2.a through 4.A.2.e. The Walker and Wyoming appointees (Darrel Schmalzel and John McCarter, respectively) under this subsection shall initially serve a 2-year term ending June 30, 2023. The Grandville and Kentwood appointees (Ken Krombeen and Mark Rambo, respectively) under this subsection shall initially serve a 4-year term ending June 30, 2025. In addition, the term of any person appointed under this provision shall terminate when that person is no longer an officer or employee of the appointing city.

- a. A judge or staff of any of the Courts or another Kent County court.
- b. The city attorney or city prosecutor of any party or any staff in those attorneys' offices.
- c. Any Kent County Prosecutor's office personnel.
- d. A police or other law enforcement officer or person employed by a police department or law enforcement agency.
- e. An attorney providing indigent legal defense services in Kent County or any person employed by an attorney, law firm or other entity providing indigent legal defense services in Kent County.

3. The governing body of an appointing city may remove an IDAB member it appointed due to misfeasance, malfeasance, or nonfeasance in office, after providing the IDAB member whose removal will be considered written notice of and an opportunity to address that governing body at a meeting before removal the governing body formally considers removal.

B. A majority of IDAB members shall constitute a quorum of the IDAB. All actions may be taken by a vote of a majority of those IDAB members attending an IDAB meeting at which a quorum of the IDAB is present. If there is a tie vote, the IDAB members may reconsider the question to determine if any IDAB member changes a vote so that a majority votes for or against the issue. Otherwise, in case of a tie vote, the motion fails.

C. The IDAB shall meet not less than 4 times per year and, upon the approval of the IDAB, more frequently. Meetings shall be held so the IDAB can timely review and approve the annual grant application (*i.e.*, compliance plan and cost analysis), grant contract, compliance issues, attorney contracts, and other items. Special meetings shall be held at the request of the IDAB chair or any 2 IDAB members.

D. The IDAB shall comply with the Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq.*, and the Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq.*

E. At its first meeting after July 1 of each odd-numbered year, the IDAB shall select a chair, vice chair, and secretary who shall serve until their successors are selected the following odd-numbered year.

F. The IDAB meetings will include the Administrator who shall inform the IDAB of the Administrator's activities, the status of compliance with MIDC grant contracts and other requirements applicable to indigent defense services in the court, review quarterly reports, consider inquiries or concerns about indigent defense services in the courts, review proposed annual compliance plans and cost analyses before their submission to the MIDC, and review or consider any other matters applicable to indigent defense attorney services in the Courts, MIDC grants, or compliance with this Contract. The Administrator and IDAB chair shall collaboratively prepare the agendas for IDAB meetings.

## 5. Withdrawal or Termination.

A. Any of the Cities may withdraw from this collaborative joint venture effective at the end of a state fiscal year (currently, September 30) by providing notice not later than March 15 of that year. Upon withdrawal, the remaining Cities will no longer provide indigent defense services for, apply for MIDC grants for, or



undertake other services, duties or obligations under this Contract related to the one of the Courts for which the withdrawing party is the court funding unit. Because Grandville and Walker are both court funding units for the 59<sup>th</sup> District Court, the withdrawal of either of them will serve as the withdrawal of both even if the other wishes to remain a party.

B. This collaboration will terminate if Wyoming or the court funding units for any two of the Courts withdraw.

C. Upon withdrawal or termination, any remaining funds and all property acquired with the funds shall be disposed of or disbursed in a manner acceptable to the MIDC.

6. Dissolution of KCIDA. The Kent County Indigent Defense Authority (**KCIDA**) formed under the Kent County Indigent Defense Authority Contract among the Cities dated as of August 1, 2021 (**KCIDA Contract**), is dissolved and the KCIDA Contract is terminated. While the KCIDA Board met to approve certain actions, except for obtaining a federal tax identification number, none of those approved actions was fully implemented because the MIDC did not approve the compliance plan and cost analysis that presumed the creation of the KCIDA.

7. General Provisions.

A. Each party had input in drafting of this Contract, so it is to be construed as mutually drafted.

B. Only the Cities and Courts are intended to benefit from this Contract. It is not intended to benefit or to give rights to any other party.

C. No lawsuit may be brought pursuant to or to enforce this Contract unless the Cities have first expressed their respective positions in writing and met to resolve any dispute.

D. By signing this contract, the parties authorize Wyoming to take all actions required of it under this Contract.

The Cities have signed this contract as of the date first written above.

**[Signed on succeeding pages.]**

**City of Grandville**

By: \_\_\_\_\_  
Steve Maas, Mayor

By: \_\_\_\_\_  
Marci Poley-Kwiatkowski, City Clerk

Date signed: December \_\_, 2021

City Council approved: December 20, 2021.

**City of Kentwood**

By: \_\_\_\_\_  
Stephen C. N. Kepley, Mayor

By: \_\_\_\_\_  
Dan Kasunic, City Clerk

Date signed: December \_\_, 2021

City Commission approved: December 21, 2021

**City of Walker**

By: \_\_\_\_\_  
Gary Carey, Jr., Mayor

By: \_\_\_\_\_  
Sarah Bydalek, City Clerk

Date signed: December \_\_, 2021

City Commission approved: December 20, 2021

**City of Wyoming**

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: December \_\_, 2021

City Council approved: December 20, 2021

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE  
AN EMPLOYMENT AGREEMENT WITH THE  
INDIGENT DEFENSE ADMINISTRATOR

WHEREAS:

1. Section 4.7 of the City Charter allows the City Manager to "...exercise his judgment in the appointment or employment of officers and employees in the administrative service."
2. The City Manager desires to appoint Paul Van Gessel as the Indigent Defense Administrator and recommends City Council approve the employment agreement the City Manager has negotiated.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Manager is authorized to execute an employment agreement with the Indigent Defense Administrator.
2. The City Manager is authorized to approve future amendments to the agreement that are generally equivalent to the existing City of Wyoming bargaining agreements.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

ATTACHMENT:  
Employment Agreement

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

**CITY OF WYOMING**  
**EMPLOYMENT AGREEMENT – INDIGENT DEFENSE ADMINISTRATOR**

This Employment Agreement with Paul G. Van Gessel is made as of December 21, 2021, was approved by the Wyoming City Council on December 20, 2021, and is to be effective on January 24, 2022, between the City of Wyoming, a municipal corporation of 1155 28<sup>th</sup> St SW, Wyoming, MI 49509 (**Wyoming**), and Paul G. Van Gessel, an individual whose current home address is as provided in the employment application (**Employee**).

**1. TERM.** Wyoming employs and appoints Employee as the Indigent Defense Administrator for the 59<sup>th</sup> District Court in Grandville and Walker, the 62-A District Court in Wyoming, and the 62-B District Court in Kentwood (together, the **Courts**), effective on January 24, 2022. Employee acknowledges that the Indigent Defense Administrator serves at the pleasure of the Wyoming City Manager, who may terminate Employee's employment and appointment for any reason at any time.

**2. PERFORMANCE.** Employee shall perform the duties of Indigent Defense Administrator in a competent and professional manner and as set forth in (i) the Indigent Defense Collaboration Contract among the cities of Grandville, Kentwood, Walker, and Wyoming (together, the **Cities**) dated as of December 21, 2021, a copy of which has been provided Employee (**Collaboration Contract**), (ii) the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 *et seq.*, (iii) standards of the Michigan Indigent Defense Commission (MIDC), (iv) MIDC grant agreements applicable the Cities and Courts, (v) Michigan Rules of Professional Conduct, (vi) applicable court rules, (vii) actions of the Indigent Defense Administration Board (**IDAB**) defined in and formed by the Collaboration Contract, (viii) any applicable provisions of the city charters and city codes of the Cities, (ix) Wyoming's established policies and practices, (x), as directed by the Wyoming City Manager, and (xi) any other applicable laws, rules, regulations, court orders or other requirements. A job description has been provided to the Employee that Wyoming may periodically revise with notice to Employee. Employee shall report to and be supervised by the Wyoming City Manager and the IDAB.

**3. SERVICE DATE.** Employee's date of service with Wyoming shall be effective January 24, 2022. Employee will be credited with all earned benefits from Employee's date of service and shall accumulate benefits uninterrupted after the effective date of this Agreement.

**4. COMPENSATION.** Employee's salary shall be established by the Wyoming City Manager in accordance with the annual budget authorization, the Wyoming City Charter, the Wyoming City Code, MIDC grant agreements, and MIDC-approved annual cost analyses, and will be paid in accordance with Wyoming payroll procedures.

**5. BENEFITS.** Employee shall be provided the same health insurance plan (including employee contribution and opt-out option), dental, vision, and life insurance plans, defined contribution plan, post-employment health plan, holidays, vacation, sick leave, sick leave incentive, bereavement leave, educational benefits, longevity pay, and payout of accrued benefits upon separation from employment as provided to regular employees in the Administrative and Supervisory Association unless otherwise stated in this Agreement.

A. In addition to the benefits listed above, on January 24, 2022, and each succeeding January 1, Employee shall be credited with 120 hours of vacation until such time as the Administrative and Supervisory Association regular employee vacation schedule applies.

B. Regardless of any other provision of this agreement, Employee shall not be eligible for payout of any accrued benefits upon separation from employment until the Employee has been employed by Wyoming for at least 5 years.

**6. PROFESSIONAL STATUS.** Employee must be and remain qualified to practice law in the state of Michigan and, by January 1, 2023, must have completed the education and training required of by the MIDC for indigent defense attorneys and must annually complete any required additional education and training at Wyoming expense. Employee must promptly report to Wyoming any professional grievance or claim of professional malpractice made against Employee. Wyoming shall pay Employee's annual dues for the State Bar of Michigan.

**7. TERMINATION.** This agreement and Employee's employment pursuant to it may be terminated as follows:

A. By Employee's resignation: Employee shall give written notice of Employee's resignation at least 30 days before its effective date. If Employee fails to do so, regardless of any other provision of this agreement, Wyoming will have no obligation to pay Employee for accumulated sick leave or vacation time or any other accrued benefits, the amount of which Wyoming shall be entitled to retain as liquidated damages for the costs it will incur as a result of such sudden resignation.

B. By the Wyoming City Manager because Employee (i) failed to substantially perform Employee's job duties (ii) committed misfeasance, malfeasance, or nonfeasance in Employee's position, (iii) engaged in criminal

misconduct, (iv) is convicted of any felony, (v) is convicted of a misdemeanor involving bodily harm or dishonesty, or (vi) performed a deliberate wrongful act: In such circumstances, regardless of any other provision of this agreement, Wyoming will have no obligation to pay Employee for accumulated sick leave or vacation time or any other accrued benefits.

C. By the Wyoming City Manager because there is no MIDC grant funding for Employee's position or the MIDC grant funding is reduced to an amount inadequate to fully fund Employee's position: In such circumstances, regardless of any other provision of this agreement, Wyoming will have no obligation to pay Employee for accumulated sick leave or vacation time or any other accrued benefits.

D. By the Wyoming City Manager, other than as provided in subsection 7.B or 7.C: If such action is taken, Wyoming shall pay Employee, in addition to any other amounts to which Employee is entitled under this agreement, an amount equal to 6 months of Employee's base salary. That severance pay will be paid to Employee over a 6-month period by checks issued on regular Wyoming paydays and will have appropriate amounts withheld. Employee's insurance (health, dental, vision and life) shall continue to be paid by Wyoming for the same period. However, if Employee secures another position of equal or greater pay during the 6-month period, Wyoming's obligation to make severance payments and continue insurance will cease. If Employee takes another position at less pay during the 6-month period, Wyoming's obligation will be limited to the difference in pay for the balance of the 6-month period. "Another position" includes employment, self-employment, independent contracting, or compensation from any source. This severance pay and benefits will be paid to Employee only if Employee signs a waiver and release of all claims in a form satisfactory to Wyoming.

E. Upon termination of Employee's employment, Employee shall arrange for the immediate and orderly transfer of Employee's office and Wyoming-owned or IDAB personal property, records, documents, and other items in Employee's possession. Employee shall also resign from any other positions to which Employee was assigned or appointed due to Employee's employment by Wyoming. Employee agrees that when Employee's employment ends, Employee must pay any expenses or other amounts that Employee may owe to Wyoming at that time. Employee authorizes Wyoming to deduct any amount owed from any wage or benefit payments that may be due to Employee.

F. Nothing in this agreement shall prevent, limit, or otherwise interfere with Wyoming's right to terminate the services of Employee at any time and for any reason, subject only to the provisions set forth in this section. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from Employee's position with Wyoming, subject only to the provisions in this section.

**8. OTHER WORK.** It is intended that Employee will provide Employee's full efforts to performing Employee's duties under this agreement. Employee shall not perform legal or other services for any other individual or entity for compensation of any kind, without the prior written consent of Wyoming's City Manager. If the Wyoming City Manager consents to Employee's performance of legal services for any other individual or entity, Employee shall obtain and maintain malpractice liability insurance with minimum coverage amounts of \$2,500,000 and shall clearly state to any client Employee is serving that such work is completely independent of Employee's work under this agreement.

**9. SCOPE AND AMENDMENTS.** This agreement is made in accordance with the provisions of the Wyoming City Charter and Wyoming City Code and is the sole agreement of the parties regarding Employee's employment by Wyoming. Except as otherwise specifically stated in this agreement, this Agreement supersedes and replaces all other representations and agreements whether oral or written. By way of illustration and not limitation, any prior agreement or promises, and any collective bargaining agreements, have no application to Employee or to the employment relationship between Employee and Wyoming. This agreement may not be modified orally, but only by an agreement in writing signed by the parties.

**10. SEVERABILITY.** The invalidity or unenforceability of any term in this agreement shall not affect the validity or enforceability of any other term in this agreement. If any term in this agreement is determined to be invalid, unenforceable, or over broad in any respect, that term shall nevertheless be enforceable to the fullest extent permitted by law.

**11. APPLICABLE LAW.** This agreement is to be interpreted, enforced, and performed under Michigan law.

**12. ASSIGNMENT.** Neither party may assign its rights, duties, or interests in this agreement without the prior written consent of the other party.

**13. JURISDICTION AND VENUE.** To the extent permitted by law, jurisdiction and venue for any action brought pursuant to or to enforce this agreement shall be solely in the state courts in Kent County, Michigan.



**14. BINDING.** This agreement shall be binding upon the parties and their heirs, subrogates, successors, and assigns.

**15. SHORTENED LIMITATIONS PERIOD.** Employee agrees that any lawsuit or claim against Wyoming arising out of Employee's employment or termination of employment (including, but not limited to, claims arising under state, federal or local civil rights laws) must be brought within the following time limits or be forever barred: (a) for lawsuits requiring a Notice of Right to Sue from the Equal Employment Opportunity Commission, within 90 days after the EEOC issues that notice; or (b) for all other lawsuits, within (i) 180 days of the event(s) giving rise to the claim, or (ii) the time limits specified by statute, whichever is shorter. Employee waives any statute of limitations that exceeds this time limit.

**City of Wyoming**

**Paul G. Van Gessel**

By: \_\_\_\_\_  
Curtis L. Holt, City Manager

\_\_\_\_\_

Date signed: \_\_\_\_\_, 2021

Date signed: \_\_\_\_\_, 2021

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE  
AN EMPLOYMENT AGREEMENT WITH THE  
ADMINISTRATIVE ASSISTANT TO THE CITY ATTORNEY

WHEREAS:

1. Section 4.7 of the City Charter allows the City Manager to "...exercise his judgment in the appointment or employment of officers and employees in the administrative service."
2. The City Manager desires to appoint Christine McMahon as the Administrative Assistant to the City Attorney and recommends City Council approve the employment agreement the City Manager has negotiated.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Manager is authorized to execute an employment agreement with the Administrative Assistant to the City Attorney.
2. The City Manager is authorized to approve future amendments to the agreement that are generally equivalent to the existing City of Wyoming bargaining agreements.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

ATTACHMENT:  
Employment Agreement

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

**CITY OF WYOMING**  
**EMPLOYMENT AGREEMENT – ADMINISTRATIVE ASSISTANT TO THE CITY ATTORNEY**

This Employment Agreement with Christine M. McMahon is made as of December 21, 2021, was approved by the City Council on December 20, 2021, and is to be effective on January 3, 2022, between the City of Wyoming, a municipal corporation of 1155 28<sup>th</sup> St SW, Wyoming, MI 49509 (**City**), and Christine M. McMahon, an individual whose current home address is as provided in the employment application (**Employee**).

**1. TERM.** City employs and appoints Employee as its Administrative Assistant to the City Attorney effective on January 3, 2022. Employee acknowledges that the Administrative Assistant to the City Attorney serves at the pleasure of the City Manager, who may terminate Employee's employment and appointment for any reason at any time.

**2. PERFORMANCE.** Employee shall perform the duties of Administrative Assistant to the City Attorney in a competent and professional manner and as set forth in the City Charter, City Code, established policies and regulations of the City, and the laws of the State of Michigan. A job description has been provided to Employee that the City may periodically revise with notice to Employee. Employee shall report to and be supervised by the City Attorney.

**3. SERVICE DATE.** Employee's full-time date of service with the City shall be effective January 3, 2022. Employee will be credited with all earned benefits from Employee's full-time date of service and shall accumulate benefits uninterrupted after the effective date of this Agreement.

**4. COMPENSATION.** Employee's salary shall be established by the City Manager in accordance with the annual budget authorization, the City Charter, and the City Code, and paid in accordance with City payroll procedures.

**5. BENEFITS.** Employee shall be provided the same health insurance plan (including employee contribution and opt-out option), dental, vision, and life insurance plans, defined contribution plan, post-employment health plan, holidays, vacation, sick leave, sick leave incentive, bereavement leave, educational benefits, longevity pay, and payout of accrued benefits upon separation from employment as provided to regular employees in the Administrative and Supervisory Association unless otherwise stated in this Agreement.

A. In addition to the benefits listed above, on January 3, 2022, Employee shall be credited with 40 hours of vacation.

B. Regardless of any other provision of this agreement, Employee shall not be eligible for payout of any accrued benefits upon separation from employment until the Employee has been employed full-time by the City for at least 5 years.

**6. TERMINATION.** This agreement and Employee's employment pursuant to it may be terminated as follows:

A. By Employee's resignation: Employee shall give written notice of Employee's resignation at least 30 days before its effective date. If Employee fails to do so, regardless of any other provision of this agreement, City will have no obligation to pay Employee for accumulated sick leave or vacation time or any other accrued benefits, the amount of which City shall be entitled to retain as liquidated damages for the costs it will incur as a result of such sudden resignation.

B. By the City Manager because Employee (i) failed to substantially perform Employee's job duties (ii) committed misfeasance, malfeasance, or nonfeasance in Employee's position, (iii) engaged in criminal misconduct, (iv) is convicted of any felony, (v) is convicted of a misdemeanor involving bodily harm or dishonesty, or (vi) performed a deliberate wrongful act: In such circumstances, regardless of any other provision of this agreement, City will have no obligation to pay Employee for accumulated sick leave or vacation time or any other accrued benefits.

C. By the City Manager, other than as provided in subsection B of this section: If such action is taken, City shall pay Employee, in addition to any other amounts to which Employee is entitled under this agreement, an amount equal to 6 months of Employee's base salary. That severance pay will be paid to Employee over a 6-month period by checks issued on regular City paydays and will have appropriate amounts withheld. Employee's insurance (health, dental, vision and life) shall continue to be paid by City for the same period. However, if Employee secures another position of equal or greater pay during the 6-month period, City's obligation to make severance payments and continue insurance will cease. If Employee takes another position at less pay during the 6-month period, City's obligation will be limited to the difference in pay for the balance of the 6-month period. "Another position" includes employment, self-employment, independent contracting, or

compensation from any source. This severance pay and benefits will be paid to Employee only if Employee signs a waiver and release of all claims in a form satisfactory to City.

D. Upon termination of Employee's employment, Employee shall arrange for the immediate and orderly transfer of Employee's office and City-owned personal property, records, documents, and other items in Employee's possession. Employee shall also resign from any other positions to which Employee was assigned or appointed due to Employee's employment by City. Employee agrees that when Employee's employment ends, Employee must pay any expenses or other amounts that Employee may owe to City at that time. Employee authorizes City to deduct any amount owed from any wage or benefit payments that may be due to Employee.

E. Nothing in this agreement shall prevent, limit, or otherwise interfere with City's right to terminate the services of Employee at any time and for any reason, subject only to the provisions set forth in this section. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from Employee's position with City, subject only to the provisions in this section.

**7. SCOPE AND AMENDMENTS.** This Agreement is made in accordance with the provisions of the City Charter and City Code and is the sole agreement of the parties regarding Employee's employment by City. Except as otherwise specifically stated in this agreement, this agreement supersedes and replaces all other representations and agreements whether oral or written. By way of illustration and not limitation, any prior agreement or promises, and any collective bargaining agreements, have no application to Employee or to the employment relationship between Employee and City. This agreement may not be modified orally, but only by an agreement in writing signed by the parties.

**8. SEVERABILITY.** The invalidity or unenforceability of any term in this agreement shall not affect the validity or enforceability of any other term in this agreement. If any term in this agreement is determined to be invalid, unenforceable, or over broad in any respect, that term shall nevertheless be enforceable to the fullest extent permitted by law.

**9. APPLICABLE LAW.** This agreement is to be interpreted, enforced, and performed under Michigan law.

**10. ASSIGNMENT.** Neither party may assign its rights, duties, or interests in this agreement without the prior written consent of the other party.

**11. JURISDICTION AND VENUE.** To the extent permitted by law, jurisdiction and venue for any action brought pursuant to or to enforce this agreement shall be solely in the state courts in Kent County, Michigan.

**12. BINDING.** This agreement shall be binding upon the parties and their heirs, subrogates, successors, and assigns.

**13. SHORTENED LIMITATIONS PERIOD.** Employee agrees that any lawsuit or claim against City arising out of Employee's employment or termination of employment (including, but not limited to, claims arising under state, federal or local civil rights laws) must be brought within the following time limits or be forever barred: (a) for lawsuits requiring a Notice of Right to Sue from the Equal Employment Opportunity Commission, within 90 days after the EEOC issues that notice; or (b) for all other lawsuits, within (i) 180 days of the event(s) giving rise to the claim, or (ii) the time limits specified by statute, whichever is shorter. Employee waives any statute of limitations that exceeds this time limit.

**City of Wyoming**

**Christine M. McMahon**

By: \_\_\_\_\_  
Curtis L. Holt, City Manager

\_\_\_\_\_

Date signed: \_\_\_\_\_, 2021

Date signed: \_\_\_\_\_, 2021

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE AND DIRECT THE MAYOR AND CITY CLERK TO SIGN  
A CONSENT TO A RESTRICTIVE COVENANT AFFECTING A PORTION OF  
BURLINGAME AVE SW AND 36<sup>TH</sup> ST SW RIGHTS-OF-WAY ADJACENT TO THE  
SPEEDWAY SITE AND RETURN IT TO THE PROJECT MANAGER FOR RECORDING

WHEREAS:

1. The City has interests in the Burlingame Ave SW and 36<sup>th</sup> St SW rights-of-way adjacent to the Speedway site on the southwest corner of that intersection.
2. The Speedway site has been a site of environmental remediation and at part of that remediation, the Michigan Department of the Environment, Great Lakes and Energy (DEGLE) is requiring, as a condition of that remediation, the recording of a restrictive covenant to impose certain restrictions and requirements on subsequent owners of that property and those with interests in the adjacent rights-of-way due to groundwater within its vicinity may be contaminated.
3. It appears from reports provided to city staff that any remaining contamination is unlikely to affect any city interests and, if it affects city costs within the adjacent rights-of-way, there are state funds available to reimburse the city for those added costs of working in the rights-of-way.
4. Consent to the restrictive covenant will enable better use of the Speedway property and is therefore in the interests of the city.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are authorized and directed to sign a consent to the restrictive covenant for the Speedway property southwest corner of Burlingame Ave SW and 36<sup>th</sup> St SW on behalf of the city and to return the signed consent to the project manager for recording in accordance with DEGLE requirements.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I certify that this Resolution was adopted by the City Council for the City of Wyoming, Michigan at its regular meeting of December 20, 2021.

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Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Restrictive Covenant

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: December 13, 2021  
Subjects: Consent to restrictive covenant for Speedway site at 3605 Burlingame SW  
From: Scott Smith, City Attorney  
Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

Adopt the Resolution to Authorize and Direct the Mayor and City Clerk to Sign a Consent to a Restrictive Covenant Affecting a Portion of Burlingame Ave SW and 36<sup>th</sup> St SW Rights-Of-Way Adjacent to Speedway Site and Return It to the Project Manager for Recording.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Community – Community is served when the city cooperates with those addressing environmental issues in a manner required by the Michigan Department of the Environmental, Great Lakes and Energy (DEGLE).

Safety – Recording of and compliance with the restrictive covenant will protect the environment, excavators and other workers in the affected rights-of-way, and the general public.

Stewardship – Environmental closure on the Speedway site enhances the city's tax base and DEGLE has funds available to reimburse the city should the restrictive covenant result in extra costs to the city.

### **BUDGET IMPACT:**

The proposed resolution should have no impact the city's budget.

### **DISCUSSION:**

There is a plume of possibly contaminated ground water under and within the rights-of-way adjacent to the Speedway site on the southwest corner of 36<sup>th</sup> St SW and Burlingame Ave SW. That groundwater is unlikely to affect excavations would occur related to work in the 36<sup>th</sup> St SW or Burlingame Ave SW rights-of-way. However, if that contaminated groundwater were to increase any city costs for work within either of the two rights-of-way, DEGLE has funds to reimburse local governments for added costs they may incur due to such contamination from former leaking underground storage tanks.

As a party with interests in property affected by the contamination, the city needs to consent to the restrictive covenant, the recording of the restrictive covenant will not unduly affect the city's interests. Staff therefore recommends adoption of the resolution.

**DECLARATION OF RESTRICTIVE COVENANT  
FOR A RESTRICTED NONRESIDENTIAL CORRECTIVE ACTION**

EGLE Reference No. RC-RRD-213-21-142

This Declaration of Restrictive Covenant (Restrictive Covenant) was recorded with the Kent County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to regulated substances present at the Property located at 3605 Burlingame Avenue SW, Wyoming, Kent County, Michigan and legally described in the attached Exhibit 1 (Legal Description of the Property) that are inconsistent with the environmental conditions at the Property. Exhibit 2 (Survey of Property and Limits of Land or Resource Use Restrictions) provides a survey of the Property that is subject to the land and/or resource use restrictions specified in this Restrictive Covenant.

The Property is associated with Speedway LLC #2289, Facility ID 00017477, for which corrective actions were completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination for releases #REL-0033-90, #REL-0128-11, and #REL-0162-11 are fully described in the site file available from the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation & Redevelopment Division (RRD), Grand Rapids District Office.

The Property described contains regulated substances in excess of the concentrations developed as the unrestricted residential cleanup criteria under Section 21304a(2) of the NREPA. EGLE recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 21304c of the NREPA.

Part 213 requires the recording of this Restrictive Covenant with the Kent County Register of Deeds based upon the corrective action measures for the site to: 1) restrict unacceptable exposures to regulated substances located on the Property; 2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA; 3) assure the exposure control measures relied upon in the site file are effective; and, 4) to prevent damage or disturbance of any element of the corrective action constructed on the Property.

The restrictions contained in this Restrictive Covenant are based upon information available at the time the corrective action was implemented by Speedway LLC. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the site file; future changes in the environmental condition of the Property; changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the site file; or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant

not being protective of public health, safety, and welfare, and the environment. The adequacy of the corrective actions undertaken pursuant to the site file may not have been reviewed by EGLE.

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

“EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

“Owner” means at any given time the then-current title holder of all or any portion of the Property.

“Property” means the real property as described in Exhibit 1 (Legal Description of the Property) of this Restrictive Covenant that is subject to the restrictions, terms and conditions described herein.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA and Part 213 of the NREPA, shall have the same meaning in this document as in Part 3 and Part 213 of the NREPA, as of the date this Restrictive Covenant is filed.

### Summary of Environmental Conditions and Corrective Action.

Hazardous substances including unleaded gasoline compounds of benzene, toluene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, naphthalene, and 2-methylnaphthalene were released from the underground storage tank system at Speedway Store #2289. Confirmed release numbers REL-0033-90, dated January 8, 1990; REL-0128-11, dated September 9, 2011; and REL-0162-11, dated October 12, 2011; were assigned to the releases. Soil and groundwater contamination remain present at levels that do not allow unrestricted use of the Property. Public health will be protected by prohibiting the use of the Property for residential land uses; prohibiting the use of groundwater for ingestion or irrigation purposes; prohibiting the construction of subsurface structures (basements); prohibiting the construction of structures unless engineering controls are incorporated; prohibiting excavation or other intrusive activity that could affect the integrity of the surface cover or clean soil; and requiring proper characterization and disposal of impacted soils, if soils are to be disturbed.

The potential presence of residual Light Nonaqueous-Phase Liquid (LNAPL), including gasoline, was properly characterized using a Conceptual Site Model in accordance with American Society for Testing and Materials designation E 2531-06 E1, and will remain in place. The residual LNAPL exists below the ground surface at depths ranging from approximately four to 30 feet below ground surface (bgs). The horizontal and vertical extent of the residual LNAPL is described in Exhibit 3 (Horizontal and Vertical Extent of Residual LNAPL in Relationship to the Property Boundaries). The restrictions provided for in this Restrictive Covenant serve to prevent unacceptable exposure to hazardous substances as a result of the conditions created by the presence of the soil and/or groundwater contaminant concentrations that exceed the unrestricted residential criteria under Section 21304a(2) of the NREPA.



NOW THEREFORE,

1. Declaration of Land or Resource Use Restrictions.

Speedway LLC, as Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

- a. Prohibited Land Uses. The Owner shall prohibit all uses of the Property as described in Exhibit 2 (Survey of Property and Limits of Land or Resource Use Restrictions) that are not compatible with or are inconsistent with the assumptions and basis for the nonresidential cleanup criteria established pursuant to Section 21304a(2) of the NREPA. Uses that are compatible with nonresidential cleanup criteria are generally described in Exhibit 4 (Description of Allowable Uses). At the time of recording of this Restrictive Covenant, the City of Wyoming Zoning Ordinance, Article 4B – B2 Zoning District allows the following uses which are not compatible with the nonresidential cleanup criteria developed for the Property and are therefore prohibited by this Restrictive Covenant: Nursery schools, day nurseries, and child care facilities for the care of seven or more people, and boardinghouses. Cleanup criteria for land use-based response activities are located in the Government Documents Section of the State of Michigan Library.
- b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances. The Owner shall prohibit activities on the Property as described in Exhibit 2 that may result in exposures above levels established in the site file. These prohibited activities include:
  - (i.) Groundwater Use Restriction: The construction and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:
    - (a) Wells or other devices constructed for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of regulated substances into the environment are permitted provided the construction of the wells or devices complies with all applicable local, state and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state or federal laws or regulations.
    - (b) Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any violation of local, state and federal environmental laws and regulations.
  - (ii.) Vapor Intrusion / New Structure Restriction: The construction of new structures, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or, unless prior to construction of any structure, an evaluation of the potential for any hazardous substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and is in compliance with Section 21304c of the NREPA.

(iii.) Barrier Restriction: Any excavation or other intrusive activity that could affect the integrity of the asphalt or concrete surface cover or the upper two feet of clean soil that serves to prevent direct contact exposure to contaminated soils. The approximately two-foot thick barrier has a base elevation of approximately 676 feet above mean sea level. Disturbance of the barrier may be allowed during short-term construction or repair projects, or for purposes of further treating or remediating the subject contamination. Any excavation or other intrusive activity, including removing, altering, or disturbing the asphalt or concrete surface cover, that could affect the integrity of the barrier, must be replaced with a cover that provides at least an equivalent degree of protection as the original barrier within 14 days of completion of the work. Repair and/or replacement of the barrier must be completed unless additional remediation or sampling is conducted that demonstrates that a barrier in the area is no longer necessary in accordance with the applicable provisions and requirements of Part 213.

2. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located on the Property in accordance with the applicable requirements of Sections 21304b of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

3. Access. The Owner grants to EGLE and Speedway LLC, and their designated representatives, the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the site file, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the site file. The right of access provided to Speedway LLC above is not required under Part 213 for the corrective action to be considered approved. This provision was agreed to by the Owner at the time the Restrictive Covenant was recorded. Accordingly, EGLE will not enforce the Owner's obligation to provide access to Speedway LLC.

4. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the site file and this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 21310a(2)(c) of the NREPA.

5. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by EGLE that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.

6. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until it is determined that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment. Improper modification or rescission of any restriction necessary to prevent unacceptable exposure to regulated substances may result in the need to perform additional

corrective actions by those parties responsible for performing corrective action at the Property or to comply with Section 21304c of the NREPA.

7. Enforcement of Restrictive Covenant. The State of Michigan, through EGLE, and Speedway LLC may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner and all other holders of a legal interest whose interest is affected by this Restrictive Covenant as documented and attached as Exhibit 5, and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, Speedway LLC has caused this Restrictive Covenant, RC-RRD-213-21-142, to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Speedway LLC**

By: \_\_\_\_\_

Name: John M. Helms

Its: Manager of Environmental Remediation

STATE OF OHIO  
COUNTY OF CLARK

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by John M. Helms, Manager of Environmental Remediation of Speedway LLC, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public Signature

Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

Prepared by:  
Jenny Roether  
Atlas Technical

When recorded return to:  
Jenny Roether  
Atlas Technical  
2650 Horizon Drive SE, Suite 110  
Grand Rapids, MI 49546

## **EXHIBIT 1**

### **LEGAL DESCRIPTION OF PROPERTY**

**Property commonly known as:**

3605 Burlingame Avenue SW, Wyoming, Kent County, Michigan

**Parcel ID: 41-17-22-228-109**

**Legal Description of Parcel ID: 41-17-22-228-109:**

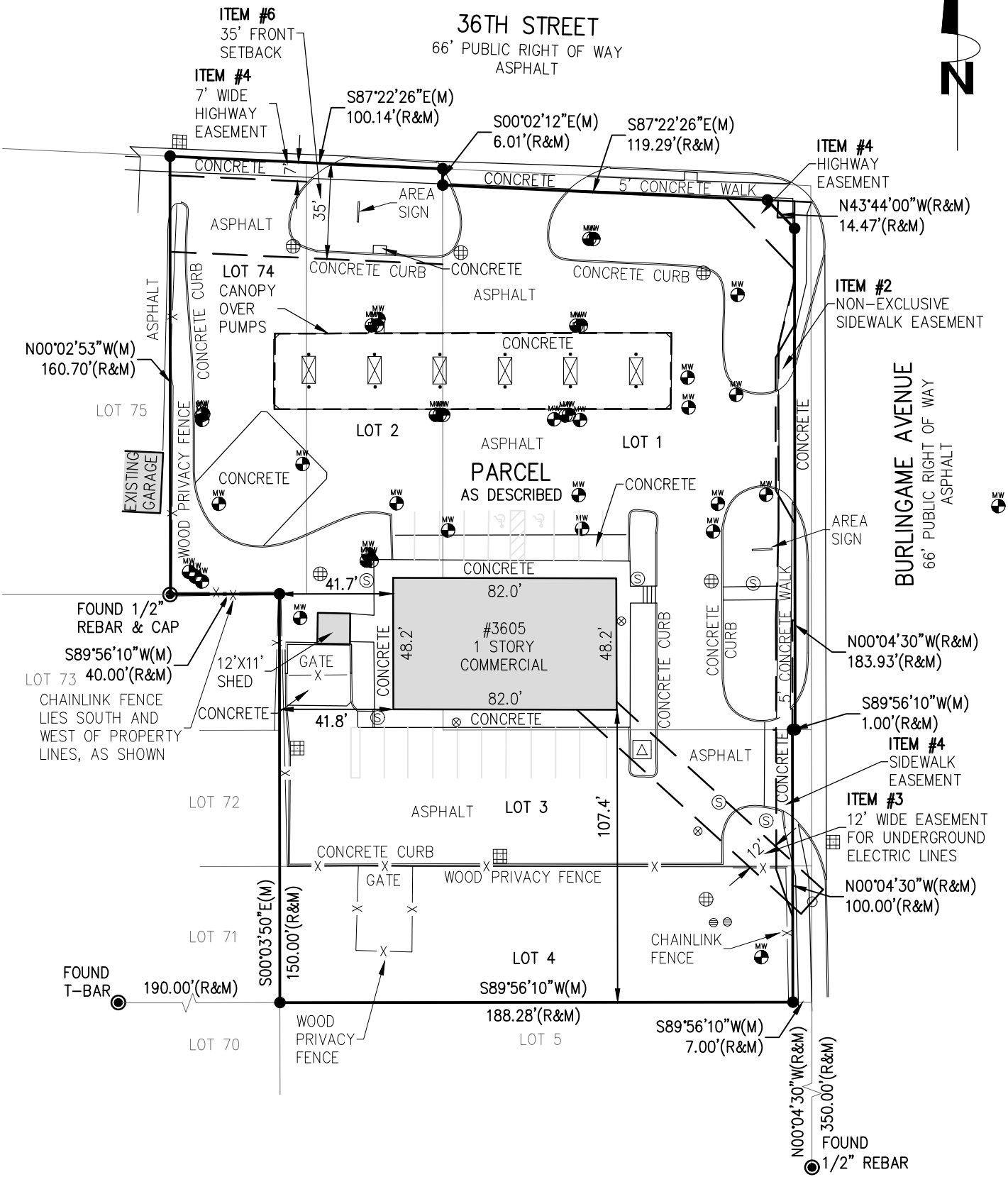
Lots 2 and 74, also Lots 3 and 4, except the East 7.0 feet, also Lot 1, except commencing at the Northeast corner of said lot, thence South 0 degrees 04 minutes 30 seconds East along East line 10.0 feet, thence North 43 degrees 44 minutes 00 seconds West 14.47 feet to North line of said lot, thence South 87 degrees 23 minutes 30 seconds East 10.0 feet to beginning, except North 6.0 feet and except East 6.0 feet of remainder, of Oak Grove Plat, Section 22, City of Wyoming, Kent County, Michigan, according to the recorded plat thereof.

**EXHIBIT 2**

**SURVEY OF PROPERTY AND  
LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

**LEGAL DESCRIPTION** (TITLE SEARCH FILE NO.: 41-21807242-GCM)  
THE LAND REFERRED TO IN THIS SEARCH IS DESCRIBED AS FOLLOWS: CITY OF WYOMING, COUNTY OF KENT, STATE OF MICHIGAN

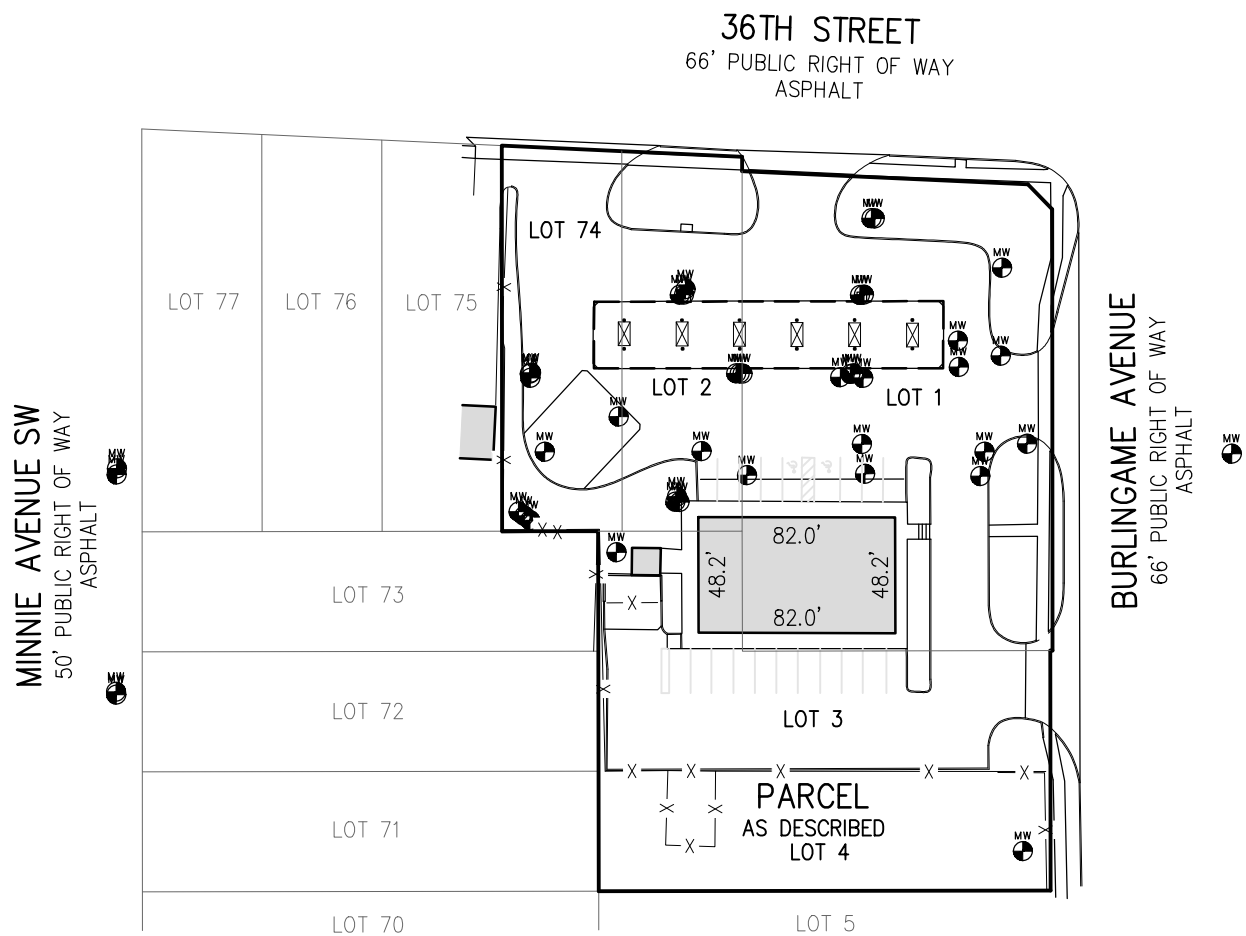
LOTS 2 AND 74, ALSO LOTS 3 AND 4, EXCEPT THE EAST 7.0 FEET, ALSO LOT 1, EXCEPT COMMENCING AT THE NORTHEAST CORNER OF SAID LOT, THENCE SOUTH 0 DEGREES 04 MINUTES 30 SECONDS EAST ALONG EAST LINE 10.0 FEET, THENCE NORTH 43 DEGREES 44 MINUTES 00 SECONDS WEST 14.47 FEET TO NORTH LINE OF SAID LOT, THENCE SOUTH 87 DEGREES 23 MINUTES 30 SECONDS EAST 10.0 FEET TO BEGINNING, EXCEPT NORTH 6.0 FEET AND EXCEPT EAST 6.0 FEET OF REMAINDER, OF OAK GROVE PLAT, SECTION 22, CITY OF WYOMING, KENT COUNTY, MICHIGAN, ACCORDING THE THE RECORDED PLAT THEREOF.



- NOTES:**
1. SURVEY IN ACCORDANCE WITH TITLE SEARCH FILE NO. 41-21807242-GCM PREPARED BY ATA NATIONAL TITLE GROUP, DATED OCTOBER 13, 2021.
  2. THE BASIS OF BEARING IS THE WEST LINE OF BURLINGAME AVENUE, AS SHOWN.
  3. SEE PAGE 2 FOR MONITORING WELL LOCATIONS ON MINNIE AVENUE.

EXHIBIT SURVEY		 <b>LAND CONSULTING</b> 30445 Northwestern Hwy., Suite 143 Farmington Hills, MI 48334 Phone: (248) 932-7120
3605 Burlingame Ave, Wyoming, Michigan		
Client: Atlas		
Date: 10/25/2021	Project No: 3446-112	
Drawn By: CG	Revision No:	
Scale: 1" = 50'	Page 1 of 2	

NOTE:  
SEE PAGE 1 FOR DETAIL OF SUBJECT PARCEL.



<div>EXHIBIT SURVEY</div> <div>3605 Burlingame Ave, Wyoming, Michigan</div>		<div> <b>LAND CONSULTING</b> 30445 Northwestern Hwy., Suite 143 Farmington Hills, MI 48334 Phone: (248) 932-7120</div>
Client: Atlas		
Date: 10/25/2021	Project No: 3446-112	
Drawn By: CG	Revision No:	
Scale: 1" = 80'	Page 2 of 2	



**EXHIBIT 3**

**HORIZONTAL AND VERTICAL EXTENT OF RESIDUAL LNAPL  
IN RELATIONSHIP TO THE PROPERTY  
BOUNDARIES**



36th Street

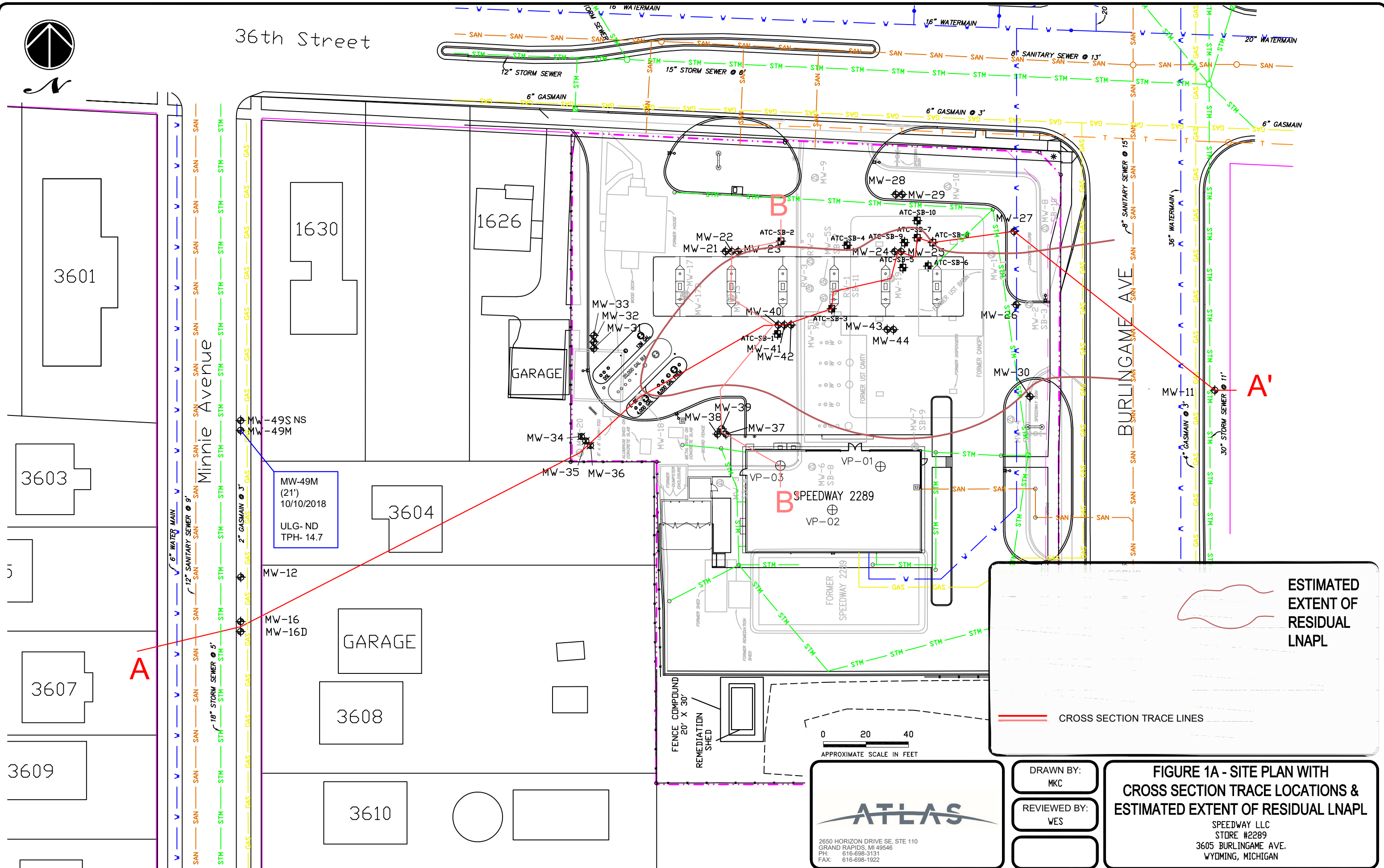
Minnie Avenue

BURLINGAME AVE

A

B

A'



ESTIMATED  
EXTENT OF  
RESIDUAL  
LNAPL

CROSS SECTION TRACE LINES

ATLAS

2650 HORIZON DRIVE SE, STE 110  
GRAND RAPIDS, MI 49546  
PH: 616-698-3131  
FAX: 616-698-1922

DRAWN BY:  
MKC

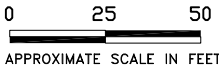
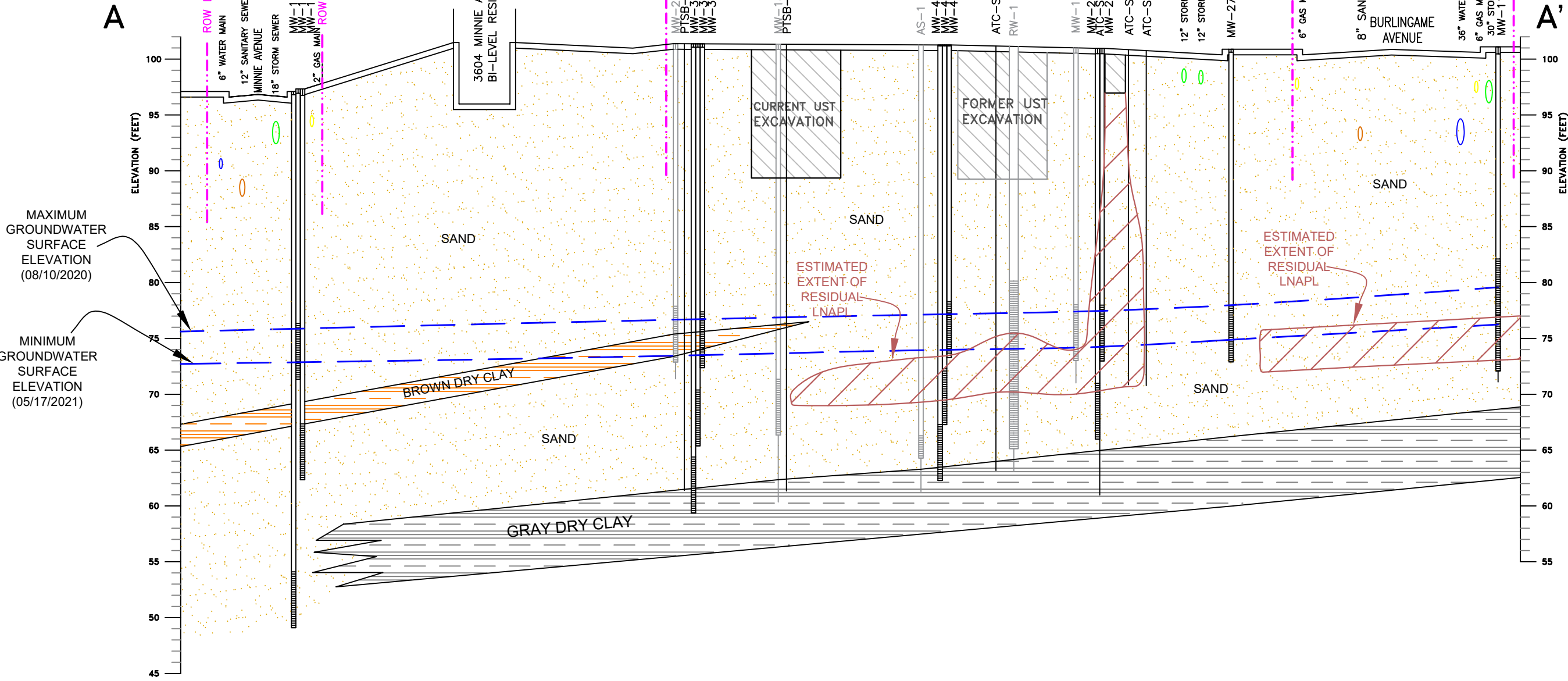
REVIEWED BY:  
WES

FIGURE 1A - SITE PLAN WITH  
CROSS SECTION TRACE LOCATIONS &  
ESTIMATED EXTENT OF RESIDUAL LNAPL

SPEEDWAY LLC  
STORE #2289  
3605 BURLINGAME AVE.  
WYOMING, MICHIGAN

SOUTHWEST

NORTHEAST



**ATLAS**

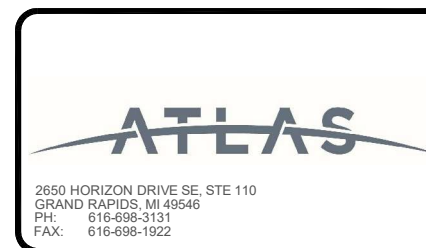
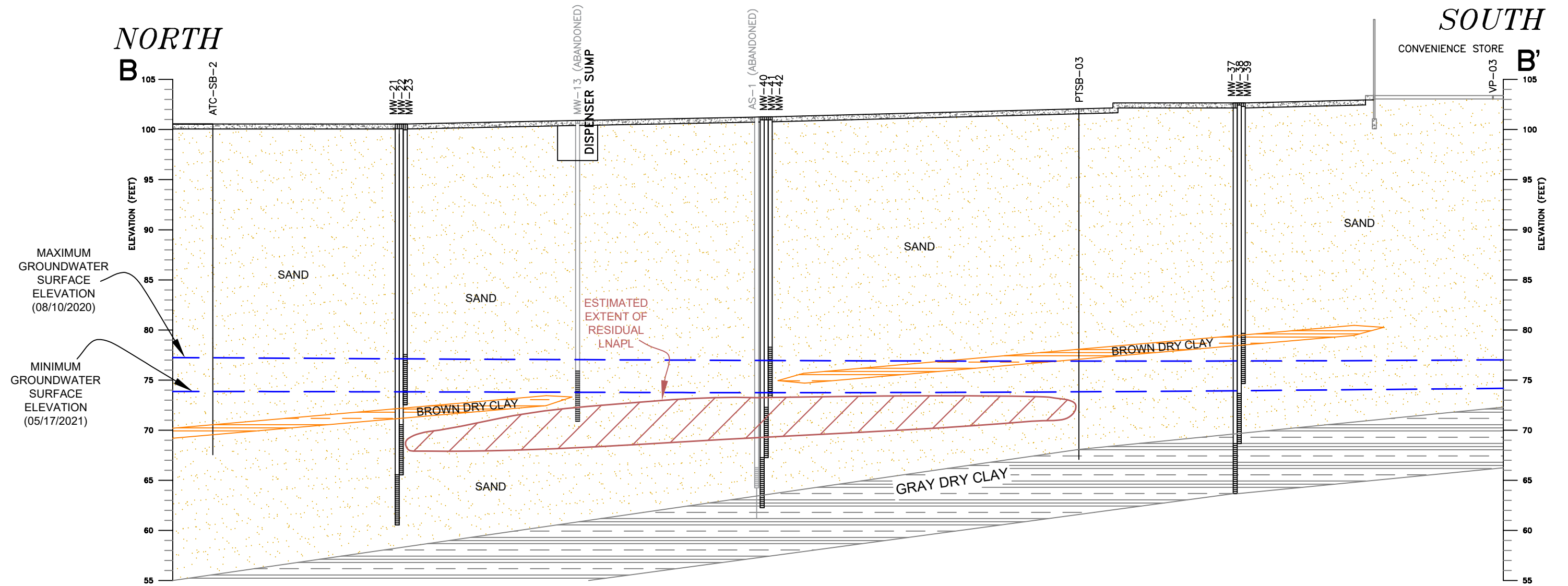
2650 HORIZON DRIVE SE, STE 110  
GRAND RAPIDS, MI 49546  
PH: 616-698-3131  
FAX: 616-698-1922

DRAWN BY:  
MKC

REVIEWED BY:  
WES

**FIGURE 1B: CROSS SECTION A - A'  
WITH ESTIMATED EXTENT OF LNAPL**

SPEEDWAY LLC  
STORE #2289  
3605 BURLINGAME AVE.  
WYOMING, MICHIGAN



DRAWN BY:  
MKC

REVIEWED BY:  
WES

**FIGURE 1C: CROSS SECTION B - B'  
 WITH ESTIMATED EXTENT OF LNAPL**

SPEEDWAY LLC  
 STORE #2289  
 3605 BURLINGAME AVE.  
 WYOMING, MICHIGAN

## EXHIBIT 4

### DESCRIPTION OF ALLOWABLE USES

**Nonresidential Land Use:** This land use is characterized by any use which is not residential in nature and is primarily characterized by industrial and commercial uses. Industrial uses typically involve manufacturing operations engaged in processing and manufacturing of materials or products. Other examples of industrial uses are utility companies, industrial research and development, and petroleum bulk storage. Commercial uses include any business or income-producing use such as commercial warehouses, lumber yards, retail gas stations, auto dealerships and service stations, as well as office buildings, banks, and medical/dental offices (not including hospitals). Commercial uses also include retail businesses whose principal activity is the sale of food or merchandise within an enclosed building and personal service establishments which perform services indoors such as health clubs, barber/beauty salons, photographic studios, etc.

Any residential use is specifically prohibited from the nonresidential land use category. This would include the primary use of the Property for human habitation and includes structures such as single family dwellings, multiple family structures, mobile homes, condominiums, and apartment buildings. Residential use is also characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm, or other sensitive populations, and therefore could include day care centers, educational facilities, hospitals, elder care facilities, and nursing homes. The use of any accessory building or portion of an existing building as a dwelling unit permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, or for a watchman or caretaker is also prohibited. Any authority that allows for residential use of the Property as a legal non-conforming is also restricted per the prohibitions contained in this Restrictive Covenant.

**EXHIBIT 5**

**CONSENT OF EASEMENT HOLDERS**

As evidenced below by my signature, I agree and consent to the recording of the land and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

Consumers Energy Company

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF MICHIGAN  
COUNTY OF KENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_, of Consumers Energy Company, on behalf of the company.  
(print name) (title)

\_\_\_\_\_  
Notary Public Signature

Notary Public, State of \_\_\_\_\_

County of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

### CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land and resource use restrictions specified in this Restrictive Covenant and hereby agree that my property interest shall be subject to, and subordinate to, the terms of the Restrictive Covenant.

City of Wyoming

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Approved as to form:  
\_\_\_\_\_  
Scott G. Smith, City Attorney

STATE OF MICHIGAN  
COUNTY OF KENT

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by Jack A. Poll and Kelli A. VandenBerg, known to me as the Mayor and City Clerk, respectively,  
of the City of Wyoming, Michigan.

\_\_\_\_\_  
Notary Public Signature

Notary Public, State of Michigan

County of Kent

My commission expires: \_\_\_\_\_

Acting in the County of Kent

12/20/21

Purchasing/LAJ

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A PROPOSAL FROM CIVICBRAND AND  
PLACE+MAIN ADVISORS TO PROVIDE CITY-WIDE REBRANDING, AUTHORIZE  
THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT AND APPROVE  
THE RELATED BUDGET AMENDMENT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept a proposal for city-wide rebranding services from CivicBrand and Place+Main Advisors in the total estimated amount of \$103,000 with payment for services made to CivicBrand.
2. Funds for the city-wide rebranding services will require the approval of the attached budget amendment.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept a proposal from CivicBrand and Place+Main Advisors to provide city-wide rebranding services.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the contract.
3. The City Council does hereby approve the attached budget amendment.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Budget Amendment

Staff Report

Proposal

Contract

Resolution No. \_\_\_\_\_



## CITY OF WYOMING BUDGET AMENDMENT

**Date: December 20, 2021**

**Budget Amendment No. 051**

To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$103,000.00 of additional budgetary authority to provide funding for the City-wide rebranding campaign as per the attached resolution.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<b><u>General Fund</u></b>				
City Council - Communication - Other Services				
101-101-10300-956.000	141,400.00	103,000.00		244,400.00
Fund Balance/Working Capital (Fund 101)		-	103,000.00	

Recommended: \_\_\_\_\_

Senior Accountant

\_\_\_\_\_

City Manager

Motion by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_  
that the General Appropriations Act for Fiscal Year 2021-2022 be amended by adoption of the  
foregoing budget amendment.

Motion carried: Yes \_\_\_\_\_, No \_\_\_\_\_

I hereby certify that at a \_\_\_\_\_ meeting of the Wyoming City Council duly held on  
\_\_\_\_\_ the foregoing budget amendment was approved.

\_\_\_\_\_  
City Clerk

## **STAFF REPORT**

Date: December 8, 2021  
Subject: City-wide Rebranding: Recommended Award  
From: John McCarter, Deputy City Manager  
Meeting Date: December 20, 2021

---

### **PURPOSE:**

Discuss and provide feedback on the recommended award of the City-wide Rebranding Campaign to CivicBrand & Place + Main. The full bid and a scope of services has been attached to this staff report.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Community – This project will provide a means for the City to establish an identity which is a key component of creating a cohesive, engaged community.

Safety – Effective branding is essential to messaging critical information to stakeholders.

Stewardship – This rebranding project will include an in-depth research component, ensuring that our new brand incorporates the past, present and a vision of where Wyoming is going in the future.

### **BUDGET IMPACT**

The total project cost is \$103,000, which is in line with staff estimates provided at the September Work Session. This cost includes all project milestones (outlined in the attached document), promotional video(s), travel costs and an activation/engagement event. The funding for this project would be allocated from General Fund fund balance.

### **DISCUSSION:**

At the September Work Session, staff presented a scope of services and estimated budget for a City-wide Rebranding Campaign for City Council input and discussion. At that work session City Council provided feedback on the scope of services and consensus direction to proceed with posting the RFP.

A panel of 7 employees evaluated the responses to the RFP and, after reviewing all proposals and conducting interviews, recommended award to CivicBrand & Place + Main. CivicBrand is an industry-leader in municipal branding, having conducted over 15 city-wide branding campaign and many more targeted branding initiatives for Chambers of Commerce, Downtown Development Authorities, and others. CivicBrand submitted a joint bid with Place + Main Advisors, an economic develop/placemaking firm based out of Lansing. Together, they bring the best of both worlds; a nation-wide, industry leading firm in CivicBrand and a Michigan-based firm who is well-versed in business recruitment and placemaking in Place + Main.

At the December Work Session, CivicBrand Founder/CEO made a short presentation and responded to questions from City Council.

### **RECOMMENDATION:**

Staff recommends approval of this contract award.

CivicBrand  X PLACE + MAIN

# CITY OF WYOMING, MICHIGAN BRANDING PROPOSAL

NOV 2021

CivicBrand  
207 1/2 F Street #6  
Salida, CO 81201

CivicBrand.com

Ryan Short  
ryan@civicbrand.com  
214.586.0795



October 28, 2021

City of Wyoming Branding Committee,

The CivicBrand team is excited to submit this proposal to the City of Wyoming, MI. After thoroughly reviewing your request, we are confident that the CivicBrand team is the perfect partner for this effort. We are one of the few agencies in the country that focuses exclusively on community wide branding and with over a 13 years of experience, we have crafted a process built on equitable stakeholder engagement, user testing and generating buy-in and civic pride.

There are 4 key factors that make CivicBrand the right choice for this project:

- Founded in 2008, our agency has over 13 years of experience.
- Community branding requires a unique approach and vast experience, which we possess, that even many of the best design agencies are simply not qualified to deliver.
- Equitable Stakeholder Engagement is at the core of our process and creates a brand that comes naturally from the community and fosters civic pride. There simply isn't another firm that does civic engagement at the level we do.
- For this project we have partnered with Michigan based firm Place + Main which will further supplement our on-the-ground presence for additional project management and engagement support and provide additional regional and local insight.

At CivicBrand, we specialize not just in community branding, but in a process that engages and inspires the entire community. Our agency has been recognized on the global stage in the City Nation Place awards for consecutive years. Our approach delivers a brand and messaging platform, not just a logo and tagline - one that cuts across the entire community to engage local residents and attract talent, investment, and tourism.

We appreciate the opportunity to tell you more about CivicBrand and our approach over the following pages, and we look forward to the opportunity of working with you and your great community!

Sincerely,

A handwritten signature in black ink, appearing to read 'BSH' with a stylized flourish extending to the right.

Ryan Short  
CEO - CivicBrand

# PROJECT TEAM



● CIVICBRAND - Project Lead

13 years in business

Offices in Dallas, TX, Oklahoma City, OK, and Salida, CO

Brand Strategy - Public Engagement - Place Making & Destination Marketing

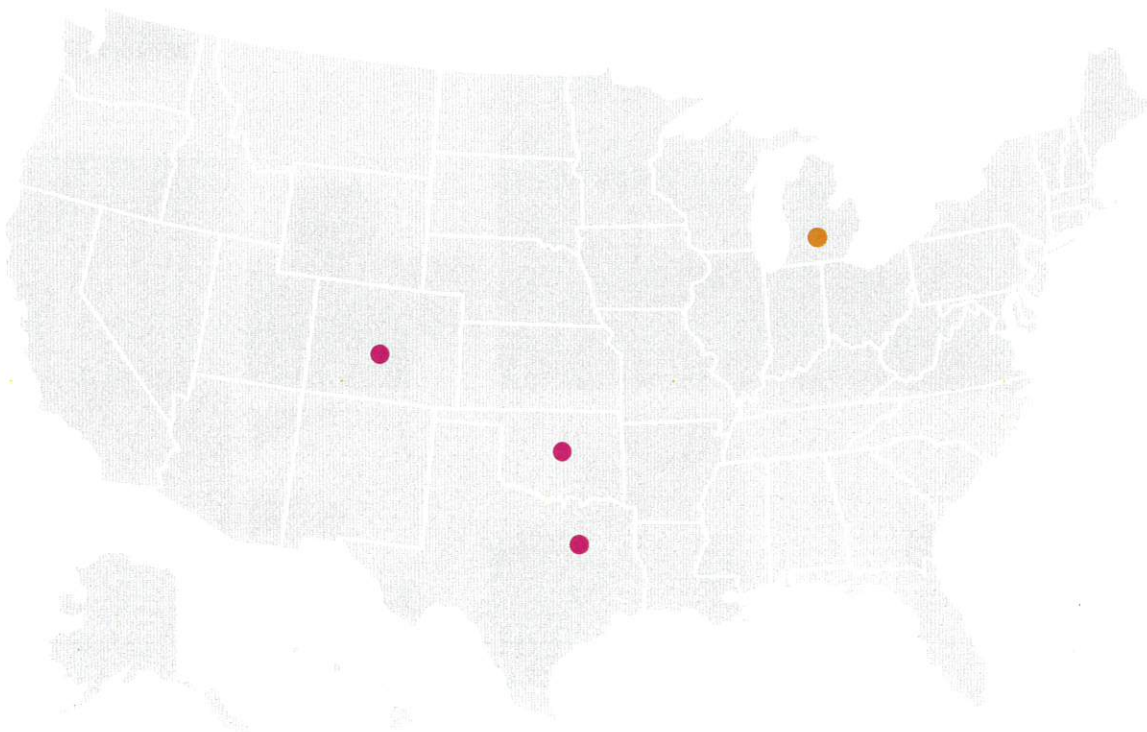
## PLACE + MAIN

● PLACE + MAIN - Subcontractor

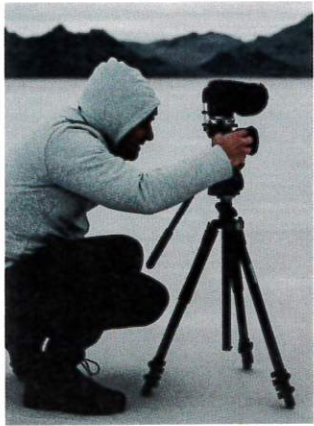
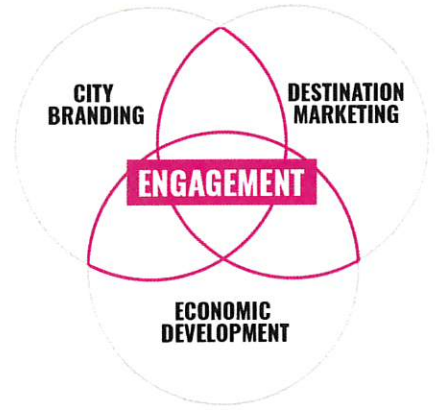
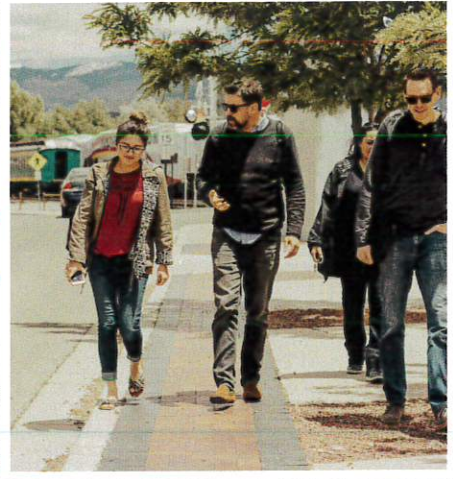
15 years in business

Offices in East Lansing, MI

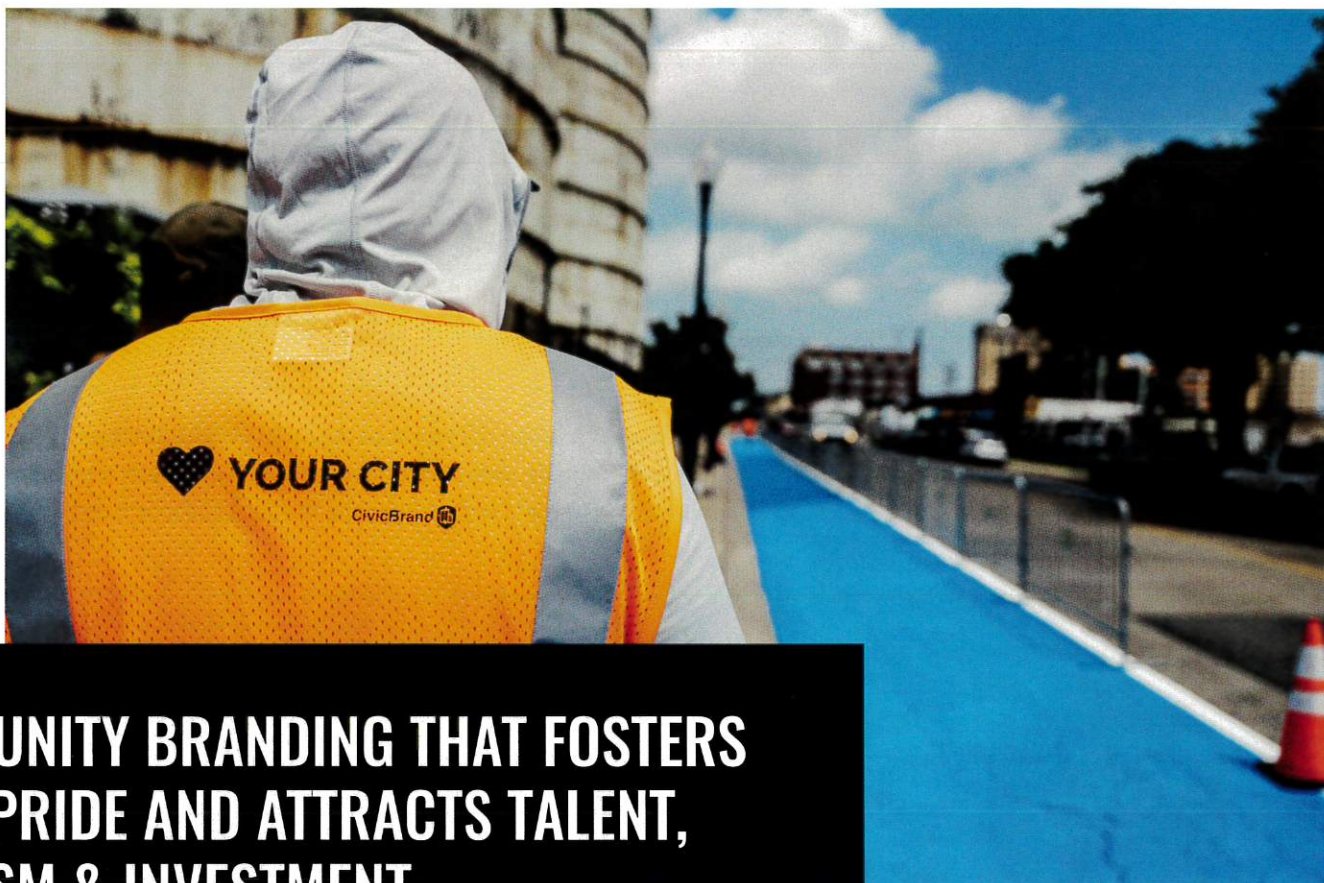
Community and Economic Development











## COMMUNITY BRANDING THAT FOSTERS CIVIC PRIDE AND ATTRACTS TALENT, TOURISM & INVESTMENT.

CivicBrand works directly with cities, improvement districts, CVBs and chambers to develop branding, marketing and public engagement strategies. Public engagement is at the core of everything we do. Our process fully engages stakeholders and creates greater buy-in, civic pride, and delivers actionable implementation plans that create stronger communities. We specialize in developing community brand platforms that impact the entire community.

- ♥ City & District Branding
- ♥ Public Engagement
- ♥ Workshops
- ♥ Focus Groups & User Testing
- ♥ Brand Audit / Research

- ♥ Project Websites & Communication
- ♥ Brand Principles & Brand Story
- ♥ Messaging Platforms
- ♥ Implementation Plans
- ♥ Video & Photography

“This is done through a process of public engagement, defining brand principles, storytelling and consistently fulfilling your brand promise.”

-RYAN SHORT / CIVICBRAND

FROM “BRANDING IS THE NEW ECONOMIC DEVELOPMENT” FORBES - AUGUST 2018

**Forbes**

“CivicBrand helps cities answer who we are, how do we become the best city in the world, and specifically, what does that mean for us. I’ve been deeply impressed with them.”

-CHUCK MAROHN / STRONG TOWNS

**STRONG  
TOWNS**

# THE CIVICBRAND TEAM



**RYAN SHORT**  
**CEO / PROJECT LEAD**

Ryan is a founder and the CEO of CivicBrand and would be the project lead. Ryan is passionate about three things - design, cities and fly fishing. With over 20 years of experience, Ryan has led the agency for over a decade and won numerous awards in design, branding, citizen engagement and digital strategy.



**BANNER SHORT**  
**FOUNDER / STRATEGIST**

Banner is a founder of CivicBrand and brings over 20 years of experience to the agency. As a leader of the agency, she helps direct the vision, strategy, and approach to community projects. Banner has experience with both the latest digital tools as well as traditional branding efforts.



**BRISA BYFORD**  
**STRATEGIST**

Brisa is a strategist that has led numerous citywide and district branding projects. She understands how to reach and engage stakeholders to create a brand story that is authentic and leads to buy-in. With expertise in brand architecture, engagement, statistics and messaging, she uses both data and creative to tell the story of communities.



**LAYNE FERGUSON**  
**PLACEMAKING**

Layne has a Master of Science in Architecture and professional experience in Urban Design and Placemaking. Before joining the CivicBrand team, Layne worked at Better Block where he led numerous placemaking activations. Layne's role is incorporating the brand into the built environment and creating places people love.



**CONNOR COX**  
**PLACEMAKING**

Connor has worked as an Analyst and Manager for local and state level economic development organizations. He has expertise in facilitating relationships with local and state planning organizations, advocacy groups, and the general public to advocate for innovative design and policy solutions. His role is to ensure the project meets the client's goals and provides an economic impact.



**CITIES HAVE THE CAPABILITY OF PROVIDING SOMETHING FOR EVERYBODY, ONLY BECAUSE, AND ONLY WHEN, THEY ARE CREATED BY EVERYBODY.**

**-JANE JACOBS**



**COLIN COOLIDGE**  
**DESIGN**

Colin brings over 20 years of experience to the agency. Colin understands designing for both print and digital and how design shapes people and their places. Colin has crafted brands and marketing materials for a number of cities, districts and organizations.



**KINSEY STEWART**  
**DESIGN**

Kinsey is an art director with an amazing talent for bringing a brand story to life through design. She understands that a brand is not just a logo but rather a promise that is reinforced through typography and design. Kinsey develops comprehensive brand platforms and guidelines for communities.



**LANDON FERGUSON**  
**DESIGN**

Landon is a brand artist and creative strategist who understands how to bring big ideas to life. He has experience in building and directing brands from start to finish for multiple businesses and organizations. Landon has expertise in creating brand strategies, comprehensive brand platforms and guidelines, and engagement and messaging platforms to engage communities.



**MATT HENRY**  
**PHOTO / VIDEO**

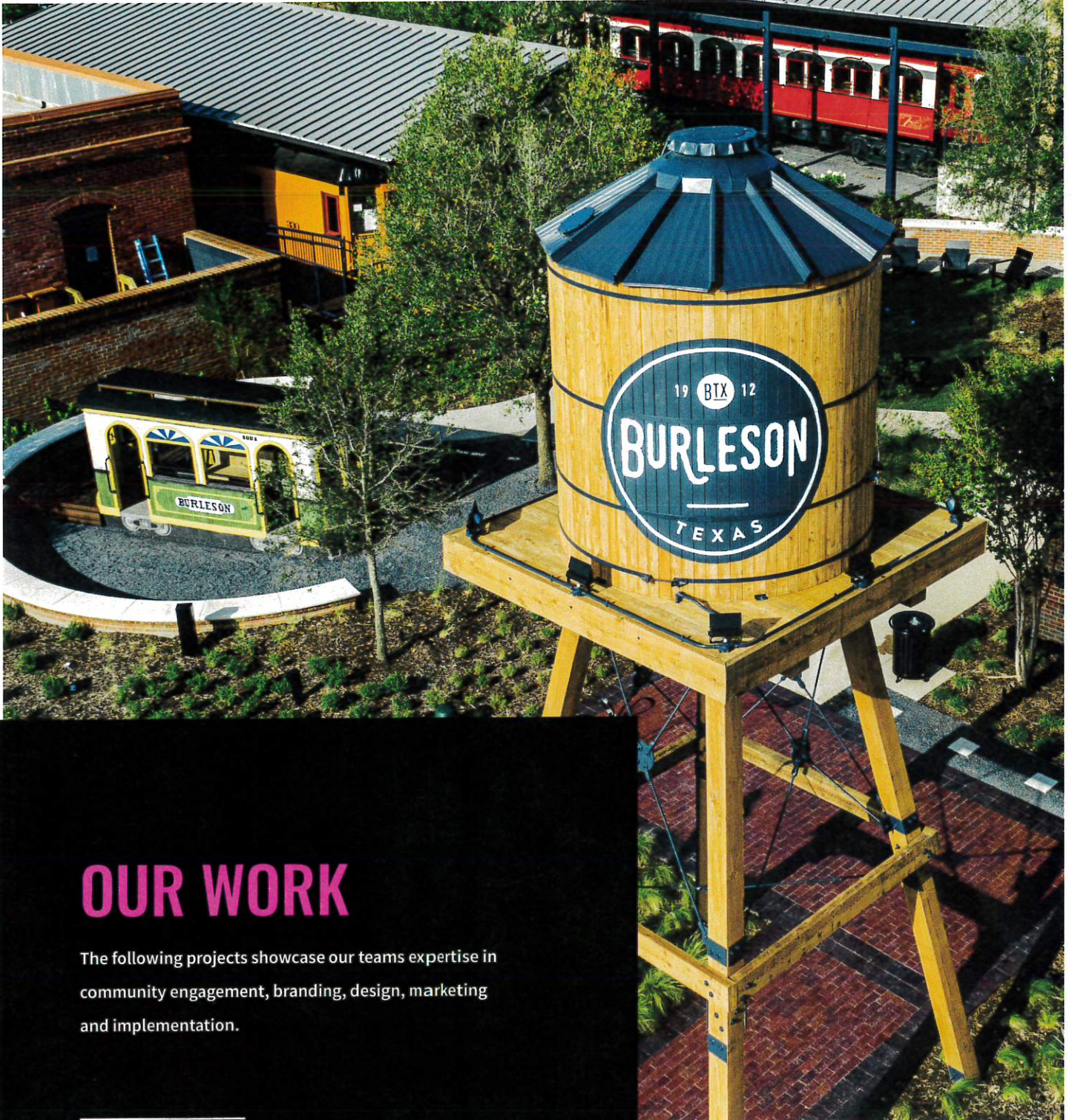
Matt's love for film-making and telling stories stems from his roots in photography. When he's not making films with CivicBrand, you can find him outdoors exploring with friends and family with a camera in hand. Matt brings a community's story to life through photography and video.



**CLAY HERVEY**  
**PHOTO / VIDEO**

Clay has been making films professionally since 2007. Combine his love for building with Lego and curiosity of photography as a child, and a career in film-making is no surprise. Community branding is all about story telling and Clay uses photography and video to create emotional films about communities.





## OUR WORK

The following projects showcase our teams expertise in community engagement, branding, design, marketing and implementation.



# RECENT AWARDS



2021 Finalist for  
**BEST USE OF DATA**  
7TH STREET PEDESTRIAN PLAZA - WACO, TX

2019 Finalist for  
**BEST USE OF DESIGN**  
CITY & CVB BRANDING - WAUPACA, WI

2018 Finalist for  
**BEST CITIZEN ENGAGEMENT**  
HEARTLAND LAKES - PARK RAPIDS, MN



2020 Gold Winner for  
**INTERACTIVE ITINERARY BUILDER**  
CITY OF ROWLETT, TX

2018 Gold Winner for  
**BRAND IDENTITY**  
HEARTLAND LAKES - PARK RAPIDS, MN

2018 Platinum Winner for  
**SOCIAL MEDIA STRATEGY**  
OLD TOWN LEWISVILLE - LEWISVILLE, TX

2017 Platinum Winner for  
**BRAND IDENTITY"**  
BENIOFF OCEAN INITIATIVE / UNIVERSITY  
OF CALIFORNIA AT SANTA BARBARA.



2017 Silver Winner for  
**WEBSITE DESIGN**  
JHP ARCHITECTURE

2017 Silver Winner for  
**WEBSITE DESIGN**  
AIRWAYS SERVICES



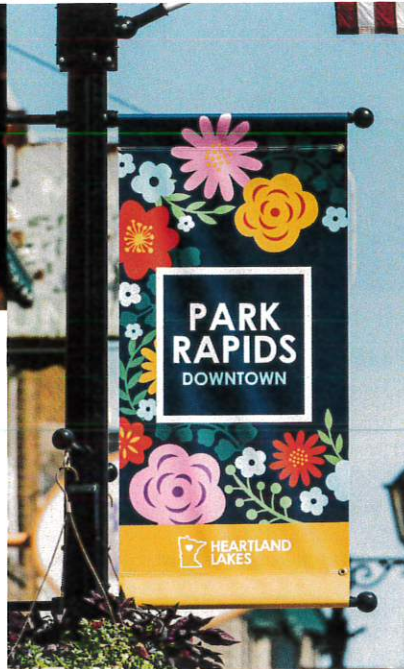
2020 - American Planning Association NM  
**1ST PLACE - LONG RANGE PLANNING**  
ELEVATE LAS CRUCES

2018 - American Planning Association TX  
**COMPREHENSIVE PLANNING AWARD**  
RENEW TEXARKANA

2017 - American Planning Association TX  
**LONG RANGE PLANNING AWARD**  
EAST SIDE FARMERS BRANCH, TX







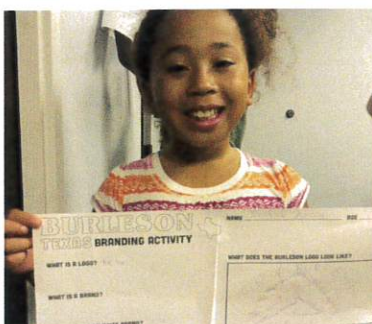
**BURLESON**  
TEXAS



**Waupaca** WISCONSIN



**MIDTOWN**  
SANTA FE



**GREENVILLE FORWARD**





# MIDTOWN SANTA FE

## BRANDING, MESSAGING & WEBSITE FOR NEW DISTRICT

CivicBrand worked with the City of Santa Fe and their Office of Economic Development to develop the brand strategy and project website for Midtown. Midtown is an important project for the city as they look to redevelop a 35 acre campus into a new mixed-use neighborhood district and market that opportunity to developers and residents and develop a strategy to reach and engage developers and the public.

MIDTOWN  
SANTA FE

MIDTOWN  
SANTA FE

MIDTOWN  
SANTA FE

MIDTOWN  
SANTA FE

- ♥ Branding Workshop with City Leadership
- ♥ District Branding
- ♥ Messaging Strategy
- ♥ District Project Website





# EMBRACE DALLAS

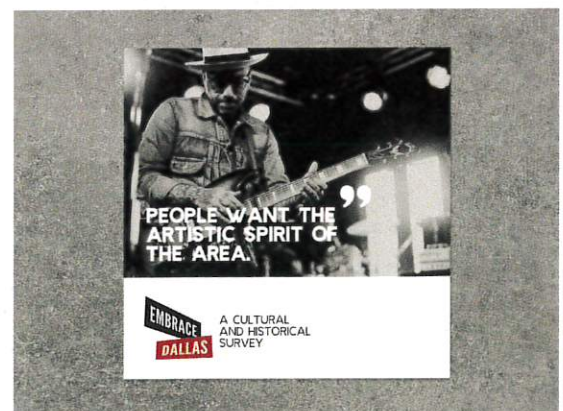
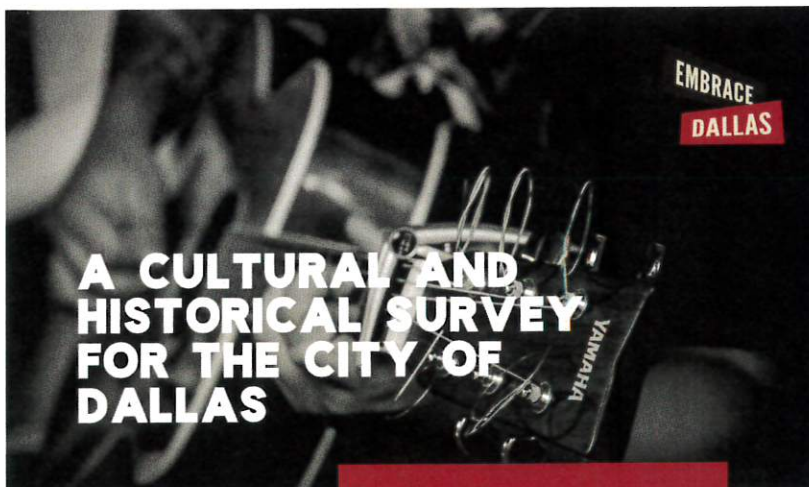
## CREATING A MOVEMENT TO EMBRACE AND PRESERVE THE HISTORY OF DALLAS

This project is a public/private partnership between Preservation Dallas and the City of Dallas that sets out to capture Dallas' physical history and map the important structures, cultural events and people that have shaped it into the vibrant city it is today. Embrace Dallas is about more than surveying buildings — it is uncovering the heritage laid within each brick. CivicBrand was hired to create a brand and campaign around the project in order to raise awareness and funds to make the survey a reality.



A CULTURAL  
AND HISTORICAL  
SURVEY

- ♥ Develop Audience Personas
- ♥ Naming & Branding
- ♥ Website Design & Development
- ♥ Video Production



We're launching an initiative for a new kind of survey. One that captures Dallas' physical history and maps the important structures, cultural events and people that have shaped us into the vibrant city we are today.



# PARK RAPIDS, MN

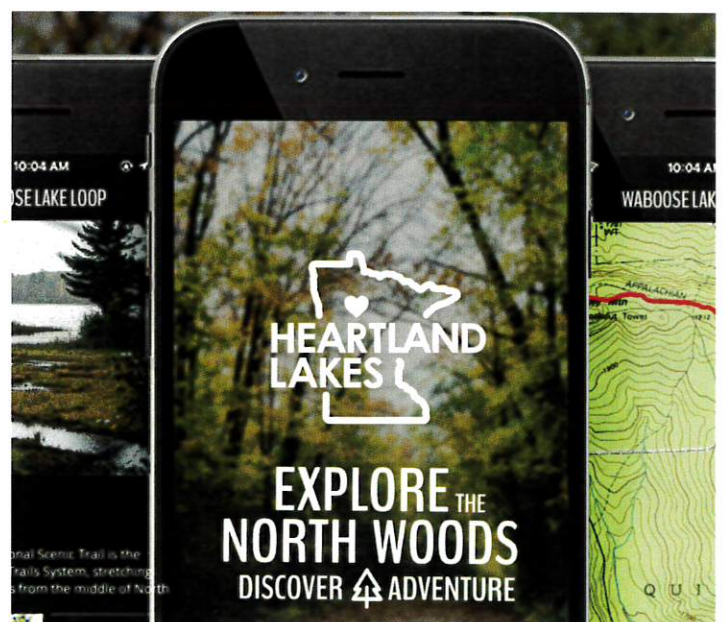


## COMMUNITY BRANDING

The community branding work that we did in Park Rapids, MN in creating the Heartland Lakes brand was nominated as a finalist in the 2018 City / Nation / Place Awards held in London, UK. We were the only agency from the U.S. that was named a finalist in this global competition. The CivicBrand approach of deeply engaging the public and producing a video documentary not only made this an award winning project but also created a sense of pride, ownership, and buy-in by pulling back the curtain and inviting everyone into the process.

- ♥ Community Branding
- ♥ Public Engagement
- ♥ Project Websites
- ♥ Website Design
- ♥ Banners & Signage

- ♥ Video Production
- ♥ Photography
- ♥ Promotional Products
- ♥ Content Strategy
- ♥ Implementation Plan





# WAUPACA, WI

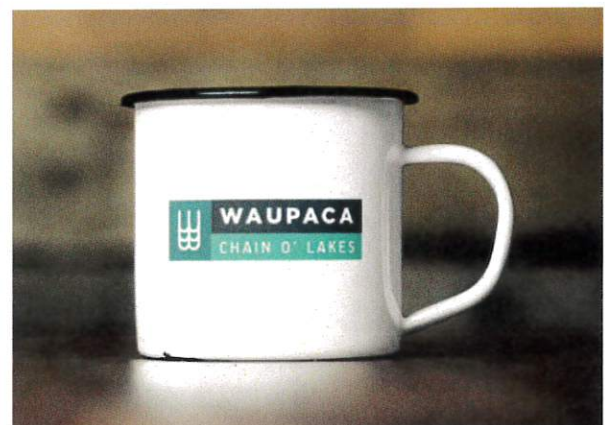


## COMBINING TOURISM WITH COMMUNITY

Like all CivicBrand projects, deeply engaging the public and producing a video documentary of the process was at the core of our project. We developed a “Chain to Main” strategy that combined the natural amenities that the Chain O’Lakes brings to the area while emphasizing the story of a strong main street community that is being revitalized to attract talent and investment.

- ♥ City & CVB Branding
- ♥ Public Engagement
- ♥ Project Websites
- ♥ Website Design
- ♥ Banners & Signage

- ♥ Video Production
- ♥ Photography
- ♥ Promotional Products
- ♥ Content Strategy
- ♥ Implementation Plan





# BURLESON, TX

## MANAGING GROWTH WITH BRANDING

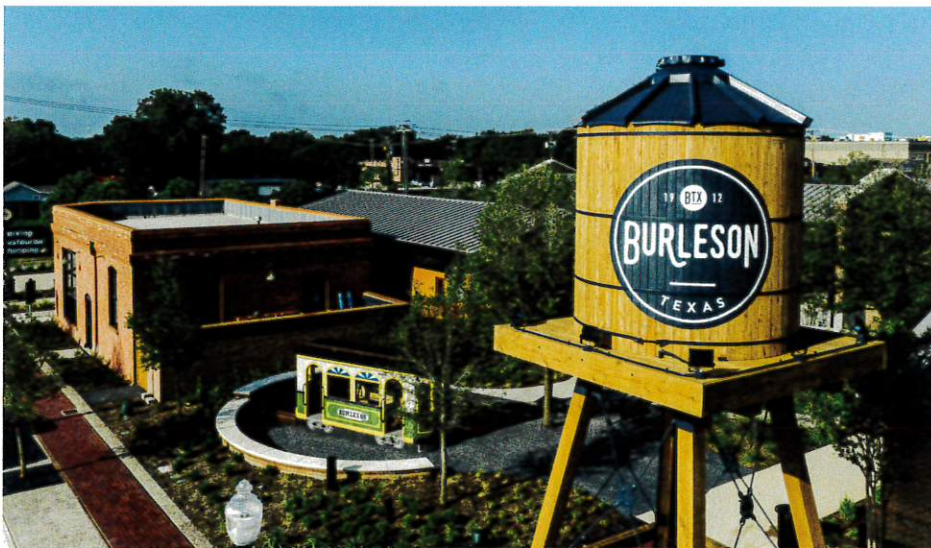
With extreme growth across all of North Texas, the City of Burleson recognized the role that branding could play in helping get ahead of that growth and ensure that they remain true to who they are, maintain their hometown feel, and continue to foster civic pride. CivicBrand worked with the city on a public engagement driven branding initiative that went far beyond just logos and design. We developed a brand platform that will cut across residents, visitors and business, designed monument signage for the new plaza in Old Town and even created a BTX Made brand that will be used to foster civic pride and locally made products.

- ♥ City Branding
- ♥ Public Engagement
- ♥ Project Website
- ♥ Plaza signage design
- ♥ Made-In brand strategy
- ♥ Video Production
- ♥ Photography
- ♥ Brand Management
- ♥ Youth & Student Events
- ♥ Implementation Plan

**BURLESON**  
TEXAS



**BTX**  
MADE



## RECENT PROJECTS

- Clackamas County, OR - County Branding
- Breckenridge, CO - Open Space & Trail branding
- Richardson, TX - District Branding & Placemaking
- Burleson, TX - Community Branding
- Two Rivers, WI - Community Branding
- Eisenhower Birthplace, Denison, TX - Branding
- Stearns County, MN - Branding & Engagement
- Washington County, MN - Branding & Engagement
- Embrace Dallas - Branding & Video Production
- Park Rapids, MN - Community Branding
- Sachse, TX - Comp Plan Branding
- Downtown Plano, TX - Branding & Placemaking
- Las Cruces, NM - Comp Plan Branding & Engagement
- Santa Fe, New Mexico - District Branding
- Texarkana, TX - Comprehensive Plan
- Lewisville, TX - Old Town Lewisville Marketing
- Little Elm, TX - Lakefront Brand Strategy
- Coppell, TX - Parks Master Plan
- Waupaca, WI - Community Branding
- Broken Arrow, OK - Comprehensive Plan
- Kerrville, TX - Comp Plan Branding & Engagement
- Forney, TX - Comp Plan Branding

## REFERENCES

### **RICH BROWN**

City of Santa Fe, NM - Economic Development  
rdbrown@santafenm.gov  
505. 955-6625

### **BUTCH DE LA HUNT**

Park Rapids, MN - Chamber President  
butch@parkrapids.com  
(218) 732-4111

### **JAMES KUNKE**

Lewisville, TX - Community Relations & Tourism  
jkunke@cityoflewisville.com  
(972) 219-3726

### **CURT ANDREWS**

City of Two Rivers, WI  
candrews@two-rivers.org  
214.215.4642

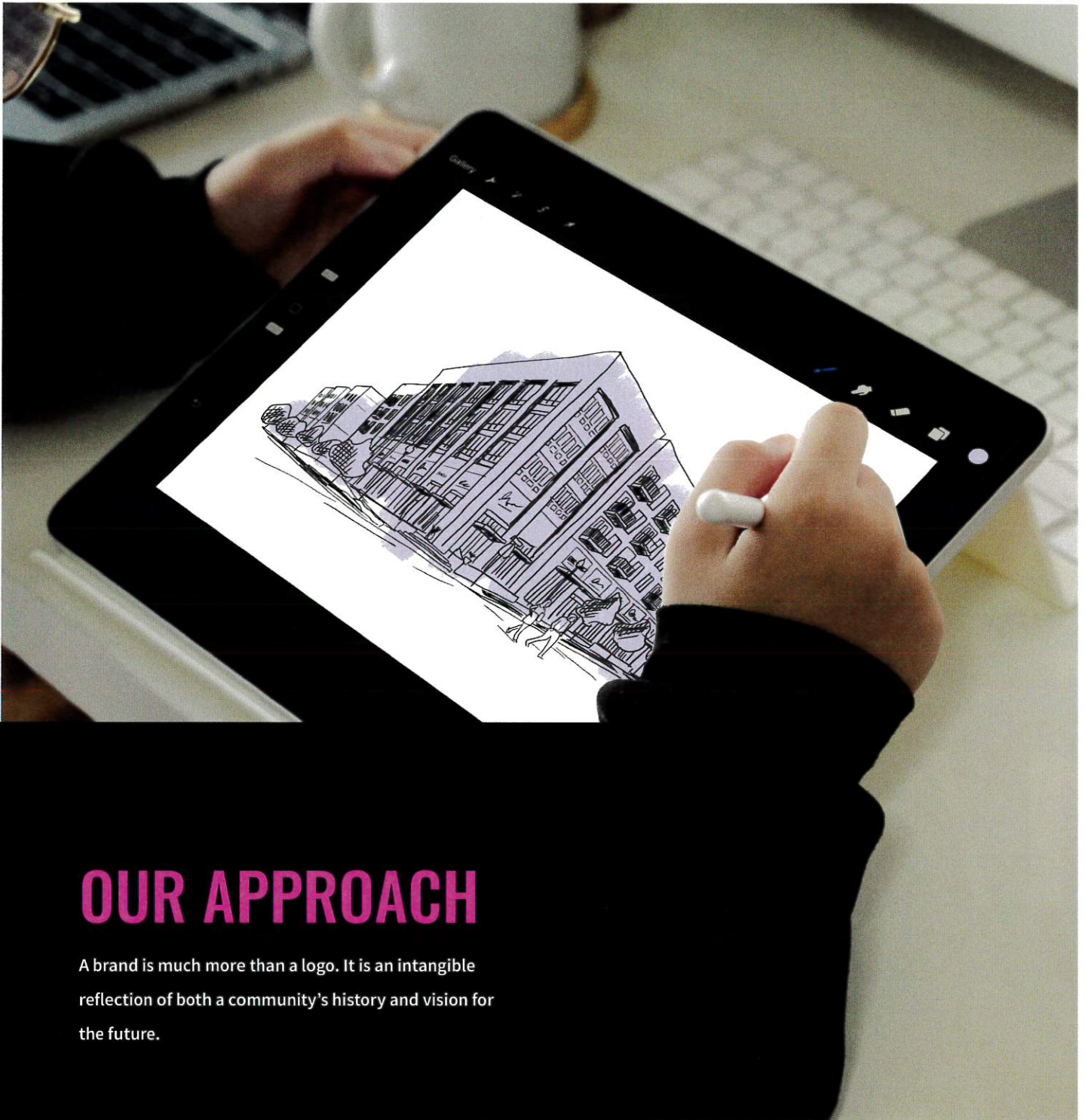
### **TERRI SCHULTZ**

Waupaca, WI - CVB President  
terri@waupacaareachamber.com  
(715) 513-0100

### **DEANNA PHILLIPS**

City of Burleson, TX  
dphillips@burlesontx.com  
(817) 416-9600





## OUR APPROACH

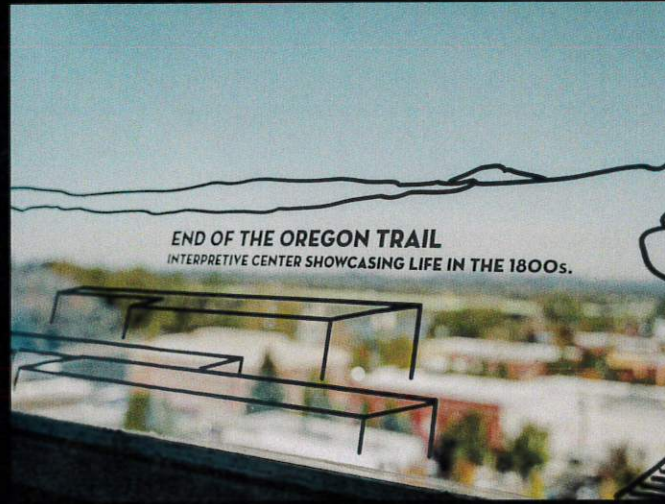
A brand is much more than a logo. It is an intangible reflection of both a community's history and vision for the future.

---



# PHASE I

## RESEARCH & ENGAGEMENT



# 1/

## BRAND CAMP & PROJECT WEBSITE

We will start the process by meeting with the project committee for what we call Brand Camp. At Brand Camp we will launch the project website which will serve as the 24/7 hub of information for the project. The project website will allow us to keep the public and stakeholders informed about the process as well as invite them to participate in online surveys and interactive style diagnostics.

The project website will evolve throughout the duration of the project and also provides an opportunity not just for input but also to inform and educate the public about the process.

# 2/

## BRAND AUDIT & COORDINATION WITH OTHER CITY EFFORTS

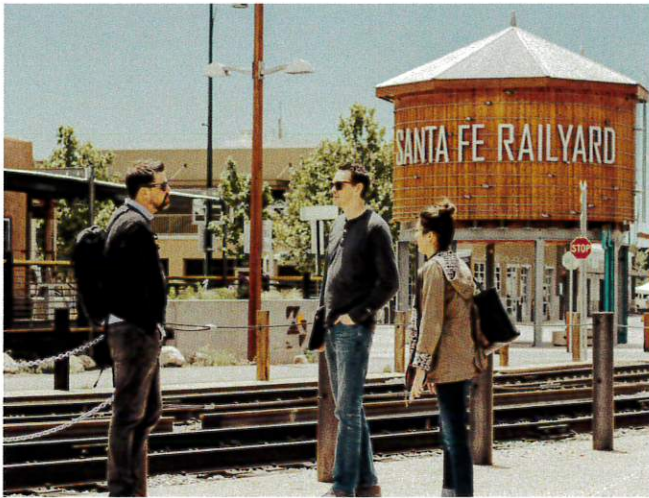
An effective branding campaign involves analyzing the current brand assets and awareness. This will allow us to see where we are, where we need to go and give us a roadmap of how to get there. This includes research of background documents as well as numerous brand touch points both online and offline.

In addition, we will coordinate with other planning efforts in the community to ensure that we are being efficient, working together and not creating engagement fatigue in the community and are inline with other community strategic plans.



**“WE TRULY APPRECIATE ALL CIVICBRAND HAS DONE AND CONTINUES TO DO FOR US. THEIR TEAM IS SPECTACULAR TO WORK WITH!”**

**-TERRI SCHULZ**  
**PRESIDENT - WAUPACA CVB**



## 3/ COMMUNITY VISITS

It's essential to experience a community first hand and with fresh eyes and communicate directly with stakeholders. This proposal includes 3 visits to the area. In those visits we engage with the committee, staff, stakeholders and residents. We will tour and experience key attractions, businesses and areas.

During those trips our team is fully documenting everything through professional photography and video. That footage will be used in development of new branding materials as well as in a new branding video that is produced at the end of the project.

## 4/ EQUITABLE ENGAGEMENT

For a branding project to be effective, it has to come from and represent the people, rather than be handed down to them. By taking an equitable engagement approach, we can develop a brand that feels both for and by the people, and thus inspires them to become more involved in their community and become brand ambassadors.

Engagement is the true difference maker in the CivicBrand process. This includes a combination of both traditional and digital engagement tools and tactics and we go out of our way to identify and reach out to different groups within the community.



# PHASE II

## IDENTITY & TESTING



# 1/

## BRAND PRINCIPLES

Branding is never about just a logo and design is not about personal taste. Therefore we will use all of the information and data we collect to develop brand principles that become the cornerstone of the brand. These brand principles become the guide for all design work and messaging and is what all deliverables will be measured against.

This allows us to create a true brand platform built on shared values and brand principles.

# 2/

## BRAND PLATFORM

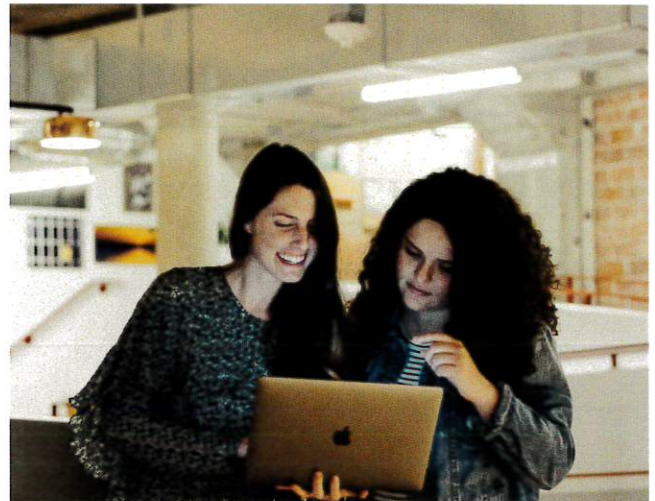
The identity design will be based off of all we learned in phase one. This process includes numerous internal revisions, as well as external revisions with your committee to develop the visual brand identity.

This is where the brand will begin to come to life. As this is a community brand with diverse needs and goals, we focus on a brand platform versus a single mark. This allows us to create a brand architecture that has multiple elements that all work together.



**“CITIES HAVE THE CAPABILITY OF PROVIDING SOMETHING FOR EVERYBODY,  
ONLY BECAUSE, AND ONLY WHEN, THEY ARE CREATED BY EVERYBODY.”**

**-JANE JACOBS**



## **3/** MESSAGING PLATFORM

An essential element of the brand identity is the messaging platform. This is not a tag line but rather a platform and framework that guides how everyone can speak the same language and be on the same page when talking about the city.

This is a key step in guiding how the new branding will be perceived by residents, as well as visitors and investors. It gives the brand a voice and tone that is carried across all brand elements and copy.

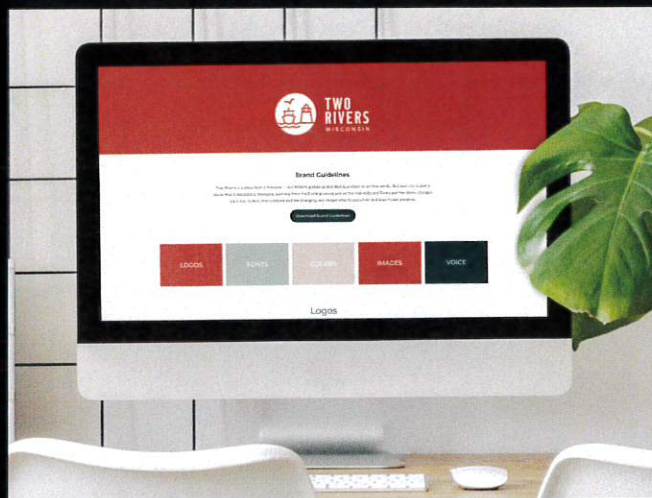
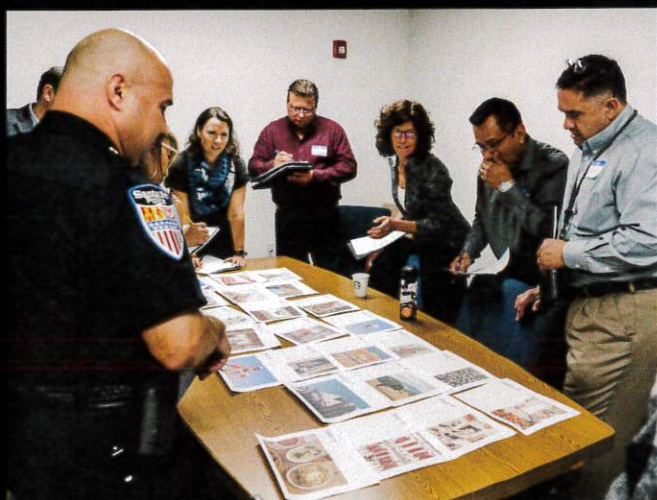
## **4/** TESTING

Once the brand identity and messaging has passed our internal reviews and revisions, it will be tested among anonymous online focus groups as well as with the branding committee to measure how effective it is against the brand principles.

Early buy-in is essential and we always avoid the big reveal. Instead we invite the community and key stakeholders into the process so that it's a collaborative process throughout.

# PHASE III

## LAUNCH & IMPLEMENTATION



# 1/

## BRAND PREVIEW

While designs and assets have been approved and tested in previous phases, at this step we will circle back to key focus groups for their final blessing before the brand goes public. This is a great opportunity to directly show these individuals how their voice shaped the final product and get them on board as brand champions before rollout.

Having these individuals come full circle is essential in building those brand champions who are the ones that will carry the project forward.

# 2/

## STYLE GUIDE & BRAND PORTAL

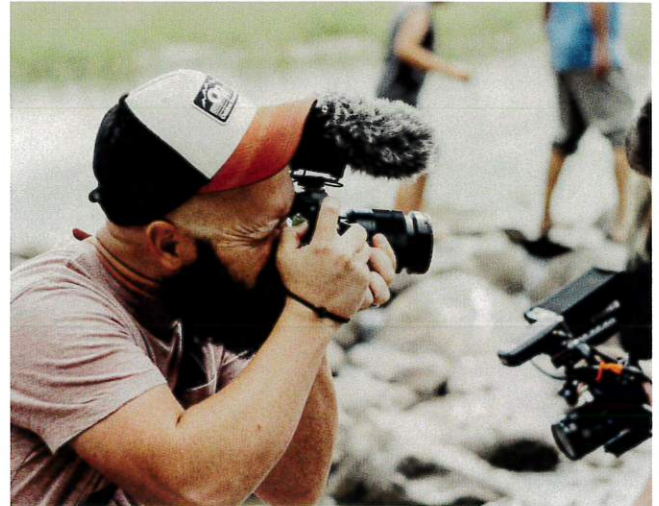
With brand identity elements approved, CivicBrand will then develop the brand assets and guidelines that reflect all of the best practices for using and managing the new branding. This will ensure that branding is consistent across channels and provides the city with easy to use digital tools for managing and implementing brand assets.

In addition to your standard brand guidelines document, we also provide a brand portal that puts all of the brand assets at the fingertips of your stakeholders making brand management a breeze.



**“CIVICBRAND’S DESIGNS ARE CUTTING EDGE AND DON’T HAVE A  
CONVENTIONAL GOVERNMENT LOOK AND FEEL.”**

**RICH BROWN**  
**DIRECTOR OF ECONOMIC DEVELOPMENT**  
**CITY OF SANTA FE**



## 3/ IMPLEMENTATION PLAN

CivicBrand will provide an implementation guide for implementing and managing the brand. This includes brand management and catalyst projects for launching the brand as well as ways to measure the effectiveness of the brand.

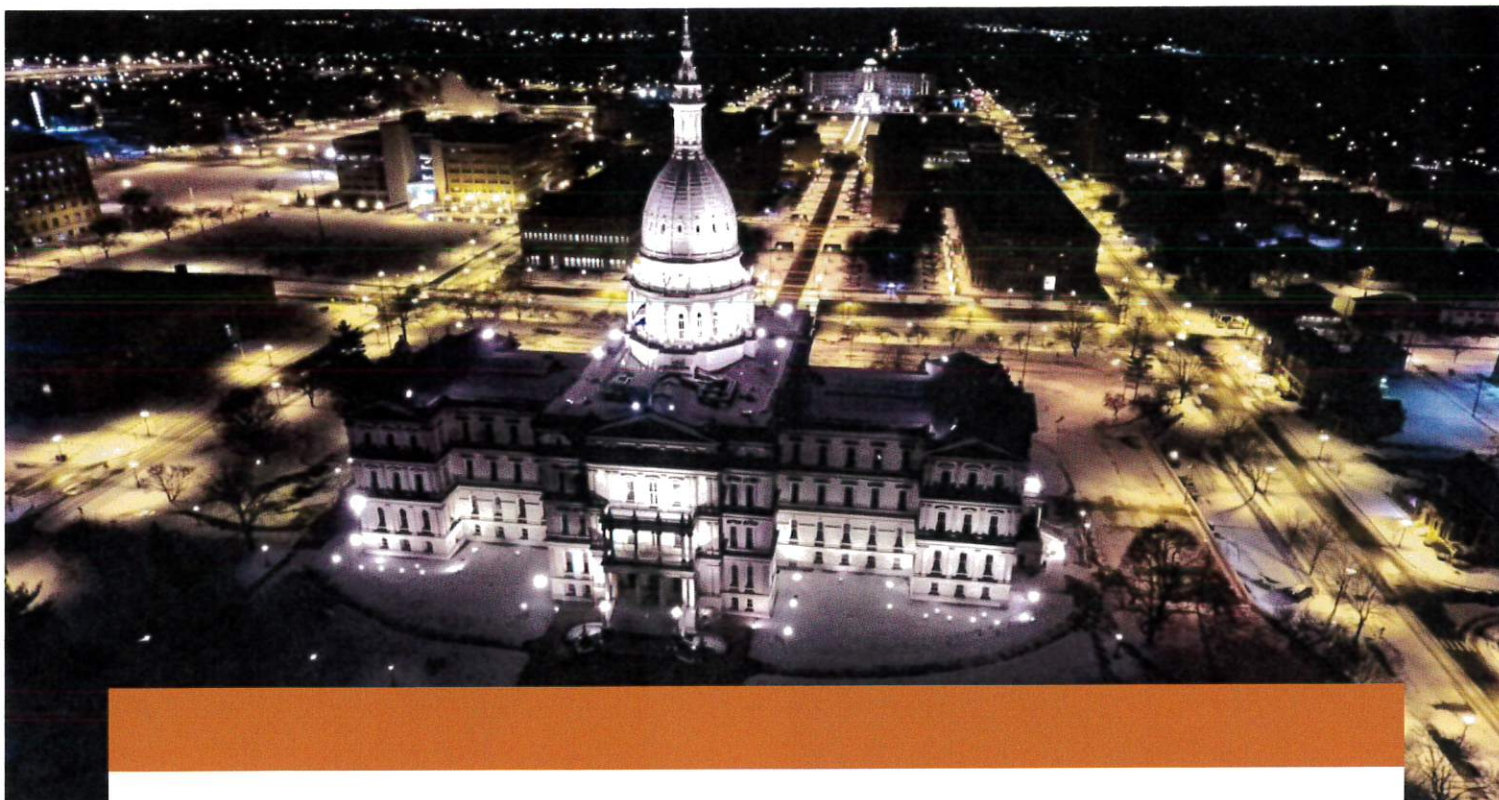
The implementation plan will include a phased approach to brand rollout and outlines what entities are involved. Identified catalyst projects will have an extra layer of detail as they are seen as key milestones in launching and growing the brand.

## 4/ BRAND VIDEO & DOCUMENTARY

Through the whole process we will be filming the public meetings and all community engagement as well as the design process and review process to create a video documentary.

Videos like this create greater buy-in by giving everyone an all-access behind the scenes look at the entire process. This creates a greater respect and understanding for the process.

In addition, we will be creating a promotional video that showcases the new branding and can be used as a marketing tool for the community.



## ABOUT PLACE + MAIN

PLACE-DRIVEN ECONOMIC DEVELOPMENT  
+ DESTINATION STORYTELLING

We help communities develop into their best selves and support small developers to create great places. We work with both groups to create the tools, techniques, and strategies to build their future and tell their stories.

Our focus is economic development at the neighborhood, downtown, citywide and regional levels. We engage the community and infuse their passion, needs, and dreams into strategies and implementation plans that get things done.

We provide high quality services, grounded in real-world experience, built on the best examples from around the country, and brought to you in a way everyone can understand. We help our clients plan out what should happen, step by step, to make strategies become realities.

Place + Main Advisors, LLC is based in East Lansing, MI

**PLACE  
+MAIN**  
ADVISORS



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Joe Borgstrom is an accomplished professional in the fields of Downtown Redevelopment, Community and Economic Development, Main Street and Placemaking. His 20+ year career includes executive management, project financial structuring and evaluation, fund development, foreign direct investment recruitment, market research, program management, public speaking and consulting. He and his teams have used state and local incentives to leverage more than \$2.2 billion in private investment into communities.

Borgstrom's expertise is in the areas of strategic planning, retail market analysis, real estate redevelopment, real estate finance, business recruitment, incentives, placemaking, and economic development strategy. He has served clients in communities as small as 700 residents to regions of more than 400,000.

In previous positions, Borgstrom oversaw the national award-winning Michigan Main Street program for the State of Michigan and was the President and CEO of the Shiawassee Regional Chamber of Commerce, which at the time was a recipient of the highly acclaimed Five Star Accreditation by the U.S. Chamber of Commerce.



**Joe Borgstrom**  
**Principal**

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A seasoned marketing and public relations professional, Kirsten Borgstrom has more than 25 years of experience in the field. Her diverse background includes marketing, media and public relations in economic development, travel and tourism, real estate development, and sports marketing.

Borgstrom launched a boutique marketing and public relations firm, PubHound Public Relations, in 2010 working with a variety of Midwest destination marketing organizations, resorts, wineries, events and products. PubHound Public Relations officially merged with Place + Main Advisors in 2020.

Prior to PubHound Public Relations, Kirsten was the Media Relations Manager for Travel Michigan where she developed and implemented local, regional, and national media relations programs to support the Pure Michigan campaign. Under her direction, Travel Michigan realized a more than tenfold increase in positive media placements.

Borgstrom's career also includes marketing, public relations and special events management with Chicago's Greater North Michigan Avenue Association and The John Buck Company, a large Chicago-based real estate development firm.



**Kirsten Borgstrom**  
**Principal**



## Place + Main Advisors

### PROJECT PROFILE



In 2018, the Branch County Economic Growth Alliance (BCEGA,) along with the Cities of Bronson and Coldwater, and Villages of Quincy and Union City, sought to develop a coordinated strategy for economic development and marketing of the county and the four municipalities therein. Place + Main Advisors was retained by the BCEGA to help them create it.

Place + Main Advisors led an extensive public participation process which sought input from all four communities as well as county leadership. The process included public Strengths, Weaknesses, Opportunities, and Threats (SWOT) analyses in all four communities as well as meeting with focus groups and key public and private businesses leaders throughout the county. Place + Main Advisors created a strategy that gives market information, defines barriers to economic growth, and outlines specific objectives at the county level and concrete steps in each community to achieve those objectives, along with timelines, responsible parties, and measurements of success for each objective. In addition, the strategy defines key messages and outlines specific steps the county and respective communities can take to better market themselves to residents, businesses, and tourists.

This one project allowed all four of the individual communities to meet Best Practice 6.1 and 6.2 as part of the Michigan Economic Development Corporation's (MEDC) Redevelopment Ready Communities program.

## Economic Development + Community Marketing Strategy Branch County, MI

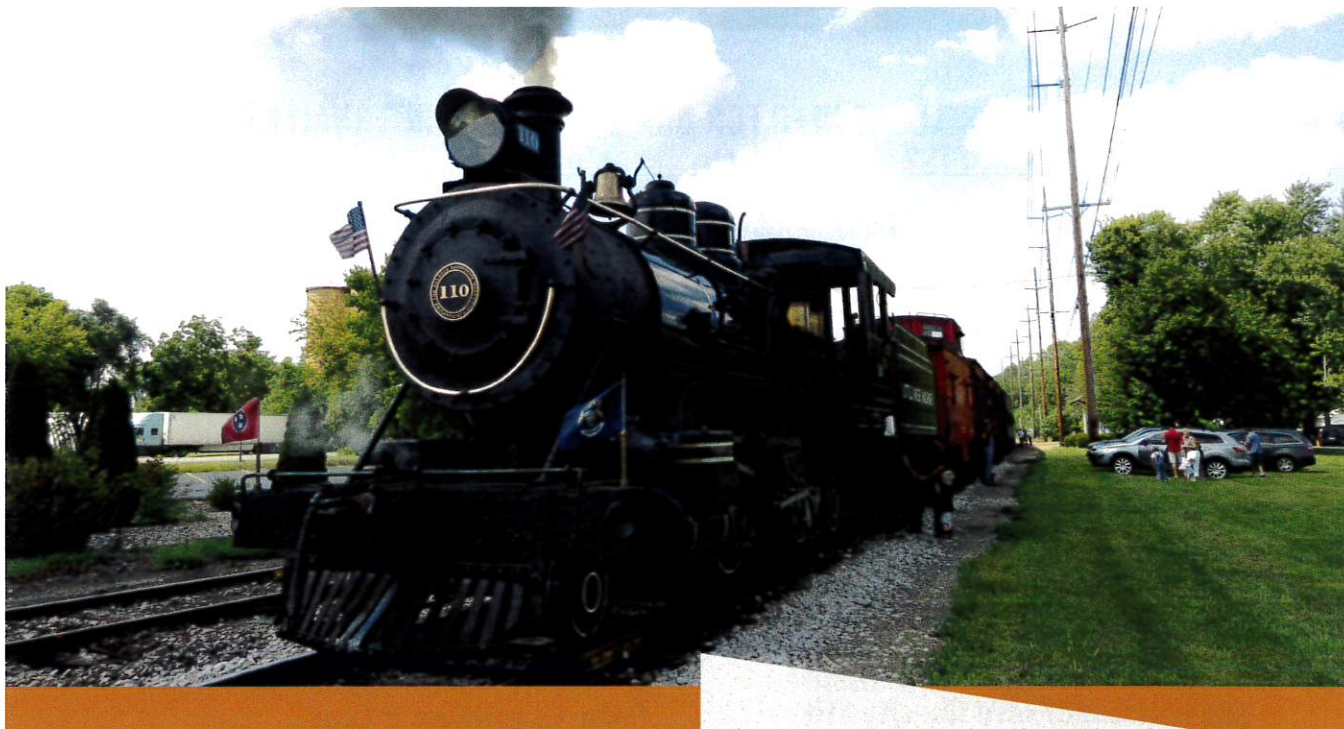


[placeandmain.com](http://placeandmain.com)



## Place + Main Advisors

### PROJECT PROFILE



Place + Main Advisors works with the Coldwater Country Conference and Visitors Bureau (CVB) developing and executing a cohesive marketing and advertising plan for the overall Coldwater Country area. From budgeting to creative and content creation, collaboration with CVB partners and story pitching, Place + Main supports the Coldwater Country CVB in their marketing efforts to motivate travel to and within the Coldwater Country area ultimately increasing the economic impact to the local economy.

A few of the pieces Place + Main collaborates with the Coldwater Country CVB on include:

- Marketing and Overall Budgeting
- Advertising and Editorial Opportunities
- Development of the Creative Campaign
- Media Pitching
- Working with CVB Partners

**COLDWATERCOUNTRY**  
*...at the pulse of Michigan*

## Marketing + Communications

### Coldwater Country Conference and Visitors Bureau



placeandmain.com



# FREQUENTLY ASKED QUESTIONS

## 1. HOW WOULD YOU HELP US SELL THE NEED FOR BRANDING (BOTH INTERNALLY AND EXTERNALLY) IN A TIME OF DECLINING BUDGETS?

This is actually something we start planting the seeds for on day one of any community branding engagement. Through the engagement process we are not only listening but are also educating and building excitement with residents, business leaders, staff and other stakeholders. This education and excitement fosters private investment in brand roll-out initiatives because businesses see how the brand can benefit them. Additionally, the residents and leadership will be more educated on what a brand truly is and the benefits of a brand and are inspired by being part of the process. This will create demand for implementation. Lastly, having a solid and clear implementation plan makes it easier to say yes and invest in because it is clear what the next steps are and you can see that it is part of a larger plan.

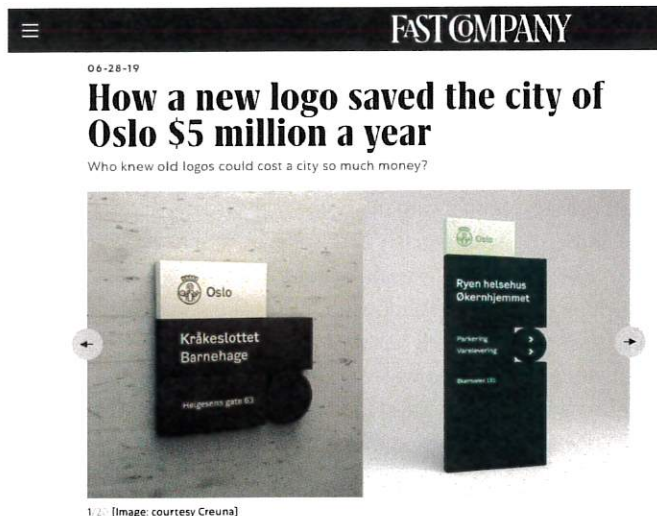
There are great examples out there about how cities have become more efficient and therefore save money by creating a comprehensive brand strategy. The cities, Oslo and Chicago, each launched a new brand that will save both cities millions of dollars per year that was previously wasted on managing multiple sub-brands and department brands.



The savings alone may be enough to justify the investment and when you consider the ROI from the impact of these brands across economic development, tourism and increased civic pride, it becomes clear that it is a wise investment.

CivicBrand founder, Ryan Short, had the following article published in Forbes. The article is about how branding is the new economic development. From attracting talent and investment to creating buzz, excitement and civic pride - branding is the right way to invest in yourself instead of giving money to outside sources.

<https://www.Forbes.com/sites/forbesagencycouncil/2018/08/31/branding-is-the-new-economic-development/>



Written by  
Ryan Short  
Ryan Short is the  
CEO of CivicBrand,  
a city and district  
branding agency  
based in Dallas, TX  
CivicBrand.com

### Branding Is The New Economic Development

For cities that give them and businesses that receive them, financial incentives aren't a sustainable way to drive economic development. With all things equal, they may tip the occasional project in your favor, but success isn't achieved at the grand opening. What is going to drive people to that business once it's open? What is going to create a sense of place? What is ultimately going to make that project a success? What is going to make your district or city a success? At CivicBrand, we're lucky to get to play a role in helping guide communities through this process.

Unfortunately, many communities still think financial incentives are all they have to offer. They bet it all on one project with hopes it will spur economic development. Instead, what creates that snowball effect is a different approach -- one that defines what makes an area unique and

# FREQUENTLY ASKED QUESTIONS

## 2. HOW WOULD YOU INVOLVE THE COMMUNITY IN THE BRAND IDENTITY PROCESS?

Forbes

### Equity In Public Engagement



Ryan Short Forbes Council Member  
Forbes Agency Council COUNCIL POST  
Leadership

Ryan Short is the CEO of CivicBrand, a city and district branding agency with offices in Dallas, TX and Salida, CO.



READ THE ARTICLE: <https://bit.ly/equity-forbes>

Public engagement is the foundation of every project we take on. Our company's mission was built on this quote by activist Jane Jacobs: "Cities have the capability of providing something for everybody, only because, and only when, they are created by everybody."

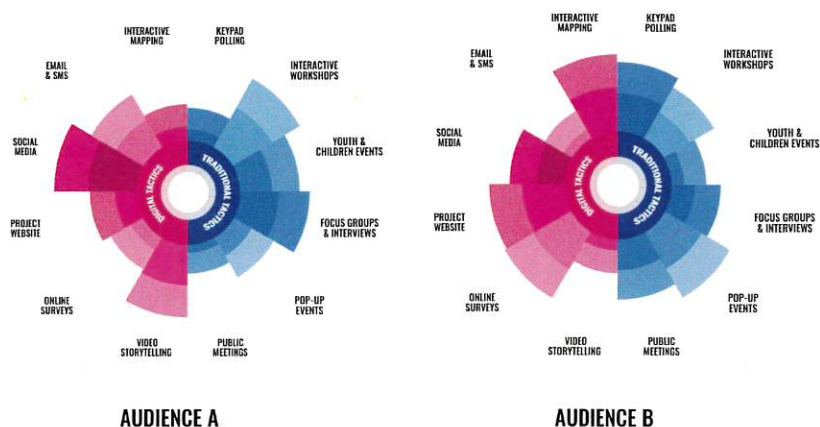
We saw that public engagement in many communities was broken, and we set out to fix that. We have developed a process and approach to public engagement that identifies the many different groups and sub-groups within a community and then matches that with the right engagement tools and tactics to most effectively reach that audience. This ensures a truly equitable approach to public engagement.



## THE RIGHT MIX OF DIGITAL & TRADITIONAL ENGAGEMENT

There is no one-size fits all public engagement strategy. Each community requires a unique combination of strategies designed to reach the entire community - from seniors to students, online and offline, across multiple languages and across all socioeconomic classes. We go where the people are and use the right tool to reach the right audience. This means implementing interactive digital tools as well as traditional engagement through public meetings, pop-up shops and street teams at public events. CivicBrand has been a leader in digital and virtual public engagement for years. While many are just now beginning to explore virtual options due to COVID-19, we have been doing it all along.

### DIFFERENT ENGAGEMENT TACTICS RESONATE WITH DIFFERENT AUDIENCES





# FREQUENTLY ASKED QUESTIONS

## 3. WHAT IS DIFFERENT ABOUT BRANDING A PLACE RATHER THAN A BUSINESS?

There are a ton of unique challenges that design firms that don't specialize in city branding are simply not qualified to do. They may do amazing work but a solid understanding of engagement, navigating politics, funding, creating buy-in and implementation for cities and public entities is entirely different. At CivicBrand we are always learning but we have refined our process over and over to be able to confidently deliver for our clients. Our design chops stand up against the best design agencies in the country and our expertise in civic branding is second to none.

There many things that come to mind that are different but the two that we'd like to point out are as follows.

### Building consensus across diverse (often polar opposite groups)

When you do public engagement right, you end up reaching diverse groups with different and often conflicting goals. You have young people and old people, those that are new to the community and those that have been there for generations, those that want growth and those that want things to stay the same. So how do you build consensus with diverse and often opposing goals and view points?

Our approach is through discovering and defining brand principles.

If you take a brand like Toyota, you will see they have different audiences. They have their truck audience that want things to be rugged and tough. Then you have your minivan audience that needs things to be family friendly and safe. You have your hybrid audience that wants things to be environmentally friendly and hip. Lastly, you have your legacy customers that have bought Toyota for generations. When building its brand, Toyota can't overly cater to one audience. Sometimes, like in the case of the gas guzzling truck and the hybrid, their audiences can seem like they are polar opposites. Instead, they look for the common threads that all the audiences share and build the brand around that. For Toyota they would say that is quality and dependability. By defining this brand principle and building the brand around quality and dependability they can support all of the different audiences. They then let their marketing use the brand as a jumping off point to support their message for their individual audiences.

We do the exact same thing with cities but there are way more than just 4 audiences. By building brand principles (through engagement) that all groups can agree on, we can create a brand that will have greater buy-in and support.





# FREQUENTLY ASKED QUESTIONS

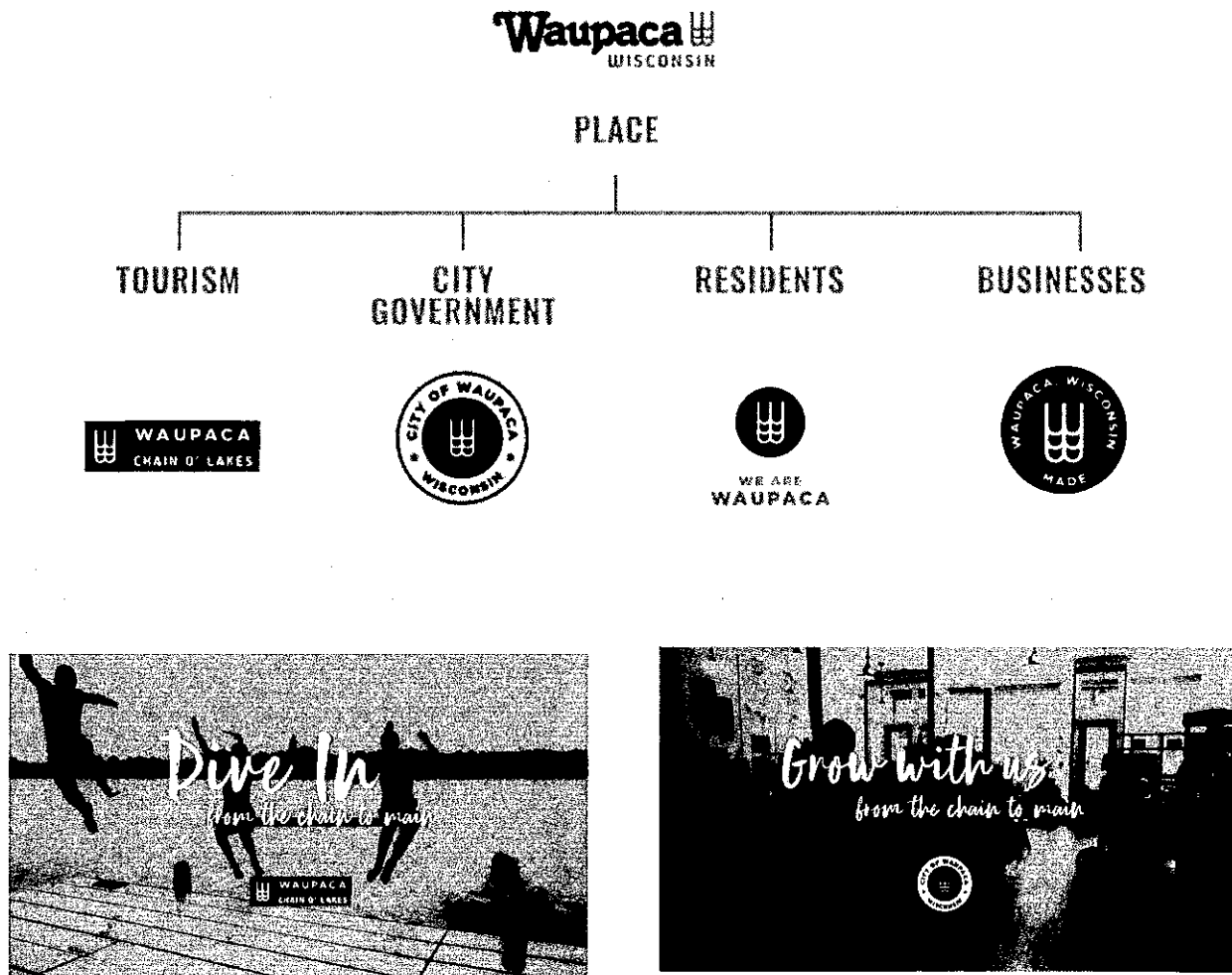
## 4. OUR COMMUNITY IS DIVERSE WITH MANY DEPARTMENTS AND ORGANIZATIONS INVOLVED. HOW CAN A SINGLE IDENTITY SERVE SO MANY COMPETING NEEDS AND PRIORITIES?

We would point back to the Toyota brand principles example under question three. By building the brand and messaging platform surrounding core brand principles, you give all of your different groups and departments the ability to use that as a starting point and a common theme but then tailor their message for their unique purpose.

A brand platform should support a lot of different goals - tourism, economic development, residents, different departments, hiring of staff, etc. We focus on creating comprehensive brand and messaging platforms that give our clients the tools they need to deliver many different messages.

In Waupaca, WI we created a brand platform and campaigns that supported both tourism and the city. Visitors were marketed to by the CVB, and talent and businesses were marketed to by the city's Economic Development department. While these were separate groups with separate audiences, we wanted them to have a single brand and messaging platform.

You can see in a series of short video ads how we used a messaging platform instead of a tagline and how the different logos within the logo system work: <https://vimeo.com/364133135>



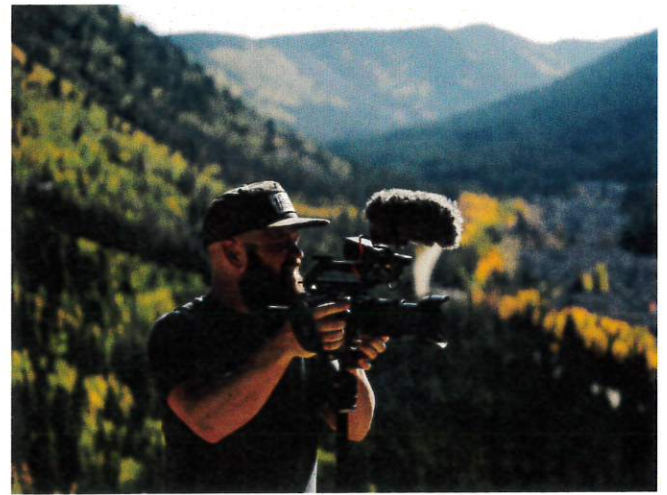
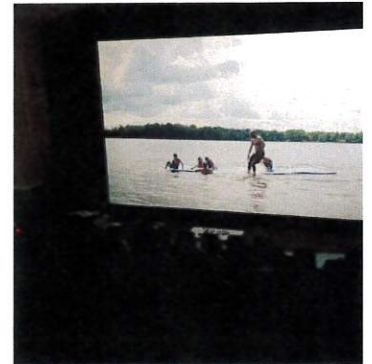
# FREQUENTLY ASKED QUESTIONS

## 5. WHY IS VIDEO PART OF YOUR PROCESS?

With community branding there are so many stakeholders that it's impossible to please every one of them. Some will be unhappy no matter what you do. Especially in this era of Facebook you will always have negative comments. However, we believe design leadership is about going through the process and doing what is right and then being confident in what you put forward. A big part of our process is producing a documentary film of the entire process. This is because even if someone participates in a survey and comes to a meeting, that is good engagement but it is just two touch points. In a project like this, there are thousands of hours put into the work and it's impossible for someone to see all of that. Through the documentary we can pull the curtain back and show them the entire process so they can see that we did it the right way and made an effort to reach and include everyone. By doing this we can arm staff and leadership to be confident and have the design leadership that is necessary to stay true and champion the end result instead of caving to a few negative Facebook comments.

The second reason is that it gives you a jump start on implementation.

We believe branding is really about story telling but if you go through an entire branding effort and come out of the process with only a great identity and message you still have to find the funds to package and tell that story. By creating video content along the way and including that in our deliverables, our clients walk away from the project with a library of photos and video that tells the story of the community and new brand.





# FREQUENTLY ASKED QUESTIONS

## 6. HOW DO YOU LAUNCH THE BRAND?

Larger launch events are part of implementation scope, but instead of just a brand reveal, we believe in throwing a party - one that is more about celebrating the community and civic pride. During the entire project we will be filming and producing a project documentary. We like to host a brand launch where we show the documentary, and we often show it many times at many different places, because it's all about meeting people where they are. In addition, we look for opportunities to integrate the brand into the built environment to activate and revitalize spaces within the community.

We produce branded giveaways featuring the new branding on apparel, stickers, tote bags and water bottles. We also develop a traveling brand presentation kit that different members of the community can take to present to their different groups such as HOAs, arts groups, sports teams, etc. This allows the brand story to be told on a more 1:1 basis by someone in the community and to start creating brand champions.



# FREQUENTLY ASKED QUESTIONS

## 7. IF YOU DON'T LIVE IN OUR COMMUNITY, HOW WILL YOU ENSURE YOU'RE PROVIDING AN AUTHENTIC EXPERIENCE FOR OUR RESIDENTS?

There is a saying we love that goes, "You can't see your label from inside the jar."

We think this is very true and even more important when it comes to community branding. There are so many aspects of a community where it is easy to be too close to it that you simply don't see the things you are communicating or things which you think you are communicating but aren't. We truly believe our outside perspective is an advantage and is extremely valuable.

We're huge believers in shopping local (in fact our CEO hasn't purchased anything from Amazon or used Amazon Prime in over 6 years) but when it comes to branding we believe the best thing you can do to support local is to simply hire the best regardless of where they are located because a successful project can be a game changer for local businesses for decades to come.

In addition, our process overcomes the fact that we are not local. Our team will make three different trips to the community and spend countless hours researching and interviewing individuals from the community. During these trips we will tour the community, speak with residents, business owners, staff, youth and students. By the end of the project and after spending about three weeks total in the community over the year and having countless interviews, conversations, emails and text messages, we end up very much feeling like part of the community. In addition the research and digital side of our engagement is ongoing throughout the entire process and in that sense we are always present.

Engagement is our number one focus. When done right, we uncover the brand story that is already there and simply help package it in a way that helps you achieve your goals. We don't fly in and tell you what your story is.

For this project specifically, we are looking to partner with Michigan-based agency Place + Main who will provide local and regional insight as well as provided added man power for project management, research, testing, and on-the-ground engagement. Place + Main founder Joe Borgstrom and CivicBrand founder Ryan Short together are founding partners of the non-profit Proud Places and organization that creates content around supporting communities and creating proud places. Therefore they have a great deal of experience strategizing together on the issues, challenges, opportunities that communities face.

Lastly, we look for opportunities to leverage local talent within the process. We utilize local talent for assistance in organizing focus groups and other engagement events. Lastly, we believe the ongoing implementation of the brand is something a local firm is set up to handle. This includes ongoing management of social media and content marketing. For developing the brand strategy hire the best, regardless of location, and for day-to-day implementation support and hire a local firm.

# TIMELINE AND BUDGET

MONTHS	1	2	3	4	5	6	7	8	9	10	11	12
BRAND AUDIT												
BRAND CAMP												
INTERVIEWS / FOCUS GROUPS												
COMMUNITY VISITS												
STAKEHOLDER ENGAGEMENT												
BRAND IDENTITY DESIGN / REVISIONS												
DEVELOP BRAND ASSETS & TEMPLATES												
IMPLEMENTATION PLAN												
*BRAND VIDEO - OPTIONAL												
*ACTIVATION / ENGAGEMENT -OPTIONAL												

## PROJECT FEE

\$60,000 Base Proposal

Optional add-ons

+ \$8K Produce brand video that tells the Brand Story

+ \$10- \$15K Pop-up Public Engagement / Placemaking Activation Event

### FEE NOTES

Project fee includes three visits to the community by the CivicBrand team. Travel expenses would be expensed and in addition to base fee.

Included deliverables: project website, brand strategy & brand story, all logo files & templates, brand standards manual, online brand portal, project documentary, produced brand video, edited photography, and implementation plan.





**PROFESSIONAL SERVICES CONTRACT**  
**CITY OF WYOMING, MICHIGAN**  
**(OVER \$8,500)**

This Contract is made as of the Effective Date between City and Professional.

*City* means the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, PO Box 905, Wyoming, MI 49509-0905.

*Professional* means: **CivicBrand**

[Name of contracting entity]  
**A Colorado Limited Liability Corporation**  
[State and type of entity, e.g., corporation, limited liability company, etc.]  
**207 1/2 F Street #6**  
[Professional's street address]  
**Salida, CO 81201**  
[Professional's city, state & zip]

*Professional's personnel* means Professional's directors, members, partners, officers, employees, contractors, consultants, agents and representatives and any other individuals or entities Professional engages to provide services under the Contract.

*Deliverables* means the work products of Professional's services as detailed in the Proposal, such as plans, specifications, bid documents, estimates, reports, opinions, recommendations, pleadings, and legal documents, real estate documents, etc.

*Effective Date* means: **December 21**, 20**21**.

*Goods* means any parts, equipment, supplies, materials, or other items or services the City is acquiring from Professional as itemized or stated in the Proposal.

*Proposal* means Professional's proposal attached as Exhibit B.

*Services* means the services described and specified in the Proposal.

*Standard Terms* means the attached 2-page Exhibit A entitled "City Contract Standard Terms and Conditions."

**TERMS AND CONDITIONS**

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Professional will perform the Services and provide the deliverables as detailed in the Proposal.
2. City will pay the Professional in accordance with the Proposal.
3. Professional represents and warrants, except for those specifically waived or modified in this paragraph, Professional is complying with and will comply with the Standard Terms. Waived or modified conditions are as follows:

[Identify those the City Attorney has agreed may be waived or the City attorney approved modifications or write "None."]

4. This is the only agreement between the parties regarding City's engagement of Professional to perform the Services. There are no other agreements, representations, or warranties except as stated in the Proposal. This contract can be amended only in writing signed by both City and Professional.

City and Professional have signed this Contract as of the Effective Date.

**CITY OF WYOMING**

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: \_\_\_\_\_, 20\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney

**Ryan Short**

[Professional's name]

By: Ryan Short  
[Signature officer, director or principal of Professional]

[Typed/Printed Name & Title of Person Signing for Professional]

Date signed: **December 15**, 20**21**

**EXHIBIT A**

**CITY CONTRACT STANDARD TERMS AND CONDITIONS**

1. **Applicability.** These Standard Terms and Conditions apply to the Contract unless expressly modified in writing signed by the Mayor and City Clerk or the City Manager.

2. **Legal Compliance.** Professional will comply with applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of governmental agencies, officials, or courts.

3. **Grant Compliance.** Professional represents and promises that, if state or federal grant funds are identified a source of payment for any part of the project, Professional has reviewed and will comply with all applicable grant agreement terms and conditions.

5. **Qualifications.** Professional represents and promises that:

A. Professional has and will maintain, and Professional's personnel have and will maintain, any needed licenses, registrations, certifications, memberships, or other approvals needed to perform the Services in Michigan.

B. Neither Professional nor any of Professional's personnel: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding this Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract with a government agency; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently criminally charged with committing any of the offenses enumerated in this certification; and (iv) have within 3-years preceding this Contract had one or more public transactions terminated for cause or default..

C. If the Contract is for a community development block grant, U.S. Department of Housing and Urban Development (**HUD**), federal and/or state funded project, Professional and Professional's personnel are not listed on HUD's list of debarred and suspended participants.

D. The successful bidder, its subcontractors and their respective personnel must register in the federal System for Award Management (**SAM**) list and be in good standing (*i.e.*, not suspended or debarred from receiving federal funds).

E. Neither Professional nor Professional's personnel is an "Iran linked business" under Michigan's Iran Economic Sanctions Act.

6. **Nondiscrimination and Respect.** City is committed to equity, fairness, impartiality, courtesy, respect and nondiscrimination in all programs, benefits, and actions, including in its contracts and any activities that Professional, Professional's personnel, contractors engage in for or on behalf of City. Accordingly:

A. Professional and Professional's personnel in (i) employment actions, (ii) solicitation, bidding or contracts with subcontractors or consultants, or (iii) solicitation, bidding or contracts for materials, will not discriminate based on race, color, religion, national origin, age, sex, height, weight, marital status, familial status, mental or physical disability, genetic information, or any other reason prohibited by law that is unrelated to the employee's or applicant's ability to perform the duties of a job or position. For purposes of this section, "sex" means sex and gender, sex or gender stereotypes, sexual orientation, gender

identity (including transgender status) or expression, and pregnancy, childbirth or conditions related to pregnancy or childbirth. Professional and Professional's personnel will comply with applicable state and federal laws, rules, regulations, orders, and other requirements regarding discrimination and inclusion, including, for example, Title VI of the federal Civil Rights Act of 1964, Michigan's Elliott-Larsen Civil Rights Act, Michigan's Persons with Disabilities Civil Rights Act, the federal Age Discrimination Act of 1975, and §504 of the federal Rehabilitation Act of 1973, together with rules, regulations, orders, directives and guidance issued pursuant to those statutes.

1. Professional will, in solicitations or advertisements for employees placed by or on behalf of Professional, state that all qualified applicants will be considered for employment without regard to race, color, religion, height, weight, marital status, sex, age, national origin, or disability unrelated to a person's ability to perform the duties of a particular job or position.

2. Professional will send to each labor union or representative of workers with which Professional has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Professional's commitments under this section and will post copies of that notice in conspicuous places available to employees and applicants for employment under this Contract.

B. If Professional or Professional's personnel will, as part of its Services, be engaging for or on behalf of City with others, Professional will ensure that engagement (i) treats all individuals with fairness, equity, impartiality, courtesy and respect, and in a manner that does not discriminate based on race, color, religion, national origin, age, sex, height, weight, marital status, familial status, mental or physical disability, genetic information, or any other reason prohibited by law, and (ii) if that engagement includes communications with individuals with limited English proficiency (*i.e.*, those who speak English less than very well), it will use language assistance services for oral and written communications. Language assistance services in accordance with City's Limited English Proficiency Plan (part of City's Nondiscrimination Plan at <https://www.wyomingmi.gov>) will comply with this requirement.

C. Noncompliance with this section is a material breach of this Contract that can result in (i) withholding payments to Professional until Professional complies, (ii) Contract cancellation, termination, or suspension, in whole or in part, and/or (iii) Professional's ineligibility to bid on or enter future contracts with City.

D. Professional will retain and, upon City's request, provide copies of all information and reports required by all laws, rules, regulations, orders, directives and guidance referred to in this section as determined by City or a state or federal agency to be pertinent to ascertain Professional's compliance. If requested information is exclusively possessed by another who fails or refuses to furnish it, Professional will so certify to City.

E. Professional must include the requirements of paragraphs A through D in all subcontracts, consultant contracts, and material procurement and equipment leasing documents, directly or indirectly related to this Contract, and any other Professional activities that HUD or the United States Department of Justice determine are needed to comply with this section. Professional must take such action with respect to any subcontractor,

consultant, material supplier, or equipment lessor as City deems reasonably necessary to enforce compliance with this section including sanctions for noncompliance.

7. Ethical Standards. Professional and Professional's personnel have not engaged in and will refrain from: (i) holding or acquiring an interest conflicting with this Contract; (ii) engaging in any act creating an appearance of impropriety with respect to the award or performance of this Contract; (iii) attempting or appearing to influence a City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than Professional's personnel, any consideration contingent upon the award of this Contract. None of Professional's personnel is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or other City officer or City board/commission member of the City except as already disclosed in writing to City. Professional will promptly inform City of any change in this circumstance.

8. Media Releases. Media releases (including promotional literature and commercial ads) pertaining to this Contract or the project to which it relates must not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. W-9. Before beginning work Professional will e-mail to [accountspayable@wyomingmi.gov](mailto:accountspayable@wyomingmi.gov) a completed an IRS W-9 form.

10. Document Ownership and Use. All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to City upon City's payment of any amounts due Professional under the City Contract. City will hold Professional harmless from and indemnify Professional for any liability resulting from the use of those documents for a purpose or project beyond the purposes and projects for which they were provided to City.

11. Intellectual Property. Professional guarantees the sale or use of software, copies, records, or other intellectual property provided or used to perform the Services and all deliverables will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to City, defend all actions against City or City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as in conjunction with this Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. City is generally exempt from federal and state taxes and a copy of supporting documents can be requested by contacting City's Finance Department.

13. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

14. Risk Allocation. Professional is solely responsible for (i) means and methods of the Services, (ii) the conduct of Professional's personnel, and (iii) injuries or property damage occurring as a result of the Services. Professional will hold City and City's officers and employees harmless from, indemnify them for, and defend them (with legal counsel reasonably acceptable to City) against all claims made by persons other than City as a result of the Services. Professional will reimburse City for or pay in City's stead costs City may incur as a result of claims, demands, judgments, administrative actions, or any order to pay any amounts made or entered against City or City's officers or employees as a result of the Services.

15. Insurance. Professional must obtain and maintain the following insurance:

COMMERCIAL GENERAL LIABILITY
Minimal Limits: \$1,000,000 Each Occurrence, \$1,000,000 Personal & Advertising Injury, \$2,000,000 General Aggregate, and \$2,000,000 Products/Completed Operations Coverage must include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Professionals; (D) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.
AUTOMOBILE LIABILITY INSURANCE
Minimal Limits (hired and non-owned automobile coverage): \$1,000,000 per person \$1,000,000 per occurrence
WORKERS' DISABILITY COMPENSATION
Minimal Limits: \$500,000 per occurrence Coverage shall be in accordance with Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.
EXCESS/UMBRELLA INSURANCE
Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).
PROFESSIONAL LIABILITY INSURANCE
Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.
ADDITIONAL INSURED
If this Contract is for more than \$5,000, General Commercial Liability, Automobile Liability and Excess/Umbrella Liability insurance shall include an endorsement stating the following are Additional Insureds: City and City's officers, employees, volunteers, agents, boards, and commissions. Coverage is to be primary and any City insurance will be secondary and/or excess.

Upon City request, Professional will provide to City's Purchasing Department copies of certificates of insurance, policies and endorsements.

16. Records. City must retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to this Contract and the Services for at least 7 years after completion of this Contract. Professional will, upon City's request, allow inspection, auditing, and copying of all retained records.

17. Assignment/Beneficiaries. Unless this Contract states otherwise, (i) none of Professional's rights or duties may be assigned or delegated without City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of this Contract.

18. Independent Contractor. Professional is wholly independent of City. None of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for acts, omissions, and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for the Services. City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.



## EXHIBIT B

Billing: Base fee of \$80,000 will be billed quarterly. Final payment will be issued upon completion of project. \$8,000 brand video and \$10,000 activation event will be billed as expenses are incurred.



## **Scope & Task Descriptions**

### **City of Wyoming, MI - Branding Project**

#### **Branding Committee**

In collaboration with CivicBrand, the City will create a steering committee of 8-12 members of the community. The advisory committee members will agree to participate in roughly 6-8 committee meetings. Two or three will be in-person as they coordinate with trips and the rest will be virtual. The committee will serve as a sounding board and brand champions by assisting with community outreach, offering strategic guidance and insight, and being champions of the process and implementation. The branding committee will not be the ones making approvals a key milestones and final deliverables but rather serving as an advisory committee to help shape the direction that the CivicBrand team, City Staff team and Council ultimately take.

#### **City Staff Team**

There will be a dedicated staff team of up to 6 individuals who will be making the decisions on incremental milestones that require approval. Of that staff team, the city will designate a primary lead point of contact for the project. If there are changes in staff or elected officials, it will not change any previously approved milestones or change the process or scope of the project.

#### **City Council**

City Council will provide feedback on the brand strategy document and will be making final approval on the final design concepts. In order, to avoid a big reveal we will want to have council members involved along and provide updates to avoid any big reveal at the very end that may require going backwards in the process.

#### **Daily / Weekly Communication**

The city staff team will have direct access to CivicBrand and there will be two project leads which will handle any daily/weekly email and phone communications. The project will start with monthly recurring status calls. At key phases of the project, the frequency of the status calls may be increased to every other week or additional ad-hoc meetings scheduled as needed.

### **Kick-Off Meetings**

We will conduct a virtual kick-off meeting with both the staff team and the committee. These will be two separate meetings.

### **Project Website**

There will be a project website with a custom URL that will be set up, hosted and managed by CivicBrand for the duration of the project. The project site will be updated at key milestones during the process. At the conclusion of the project, CivicBrand can either transfer ownership of the domain to the city or can discuss ongoing hosting and or relaunch options of the website as part of the implementation plan.

### **Translation**

Included in the base project fee is Spanish translation of the project website and community wide surveys and the meeting-in-a-box. Translation into additional languages is available but would be an additional added services fee for those. CivicBrand will coordinate with the City and meet with and provide guidance and training to any foreign language translator that is needed to either facilitate in-person meetings or online focus groups. The fee for hiring the translator is not included in the base fee but our time in bringing them up to speed and preparing them to facilitate the events is. That individual's fee would be covered by the city if it is needed.

### **Community Visits**

The CivicBrand team will visit the community three times. The number of team members visiting may vary from trip to trip. The first two trips will focus primarily on engagement while the third trip will focus on producing content for the final brand assets including the video. CivicBrand's fees cover travel expenses for all three trips. CivicBrand will work with the city staff team and committee to determine the schedule for each trip including site visits, interviews, focus groups and any public events that we may attend or participate in. The base fee also covers up to 8 visits by the Place+Main team. As an example, they could do 2 days during each of our visits and 2 separate single day visits out there on their own. How these visits by Place+Main are utilized will be determined collaboratively between CivicBrand, Place+Main and the staff team.

### **Interviews**

In addition to any interviews that happen during the three trips, there will also be virtual interviews of each member of the staff team, each member of the committee and then up to 10 additional virtual interviews. CivicBrand will work with the city staff team and committee to determine who those interviews should be with.

## **Focus Groups**

In addition to any focus groups that happen during the three trips, there will also be up to 9 virtual focus groups. The staff team and committee will help identify and invite individuals to these meetings. CivicBrand will handle all technical coordination of the virtual focus groups.

## **Survey**

CivicBrand will work with the staff team and committee to develop a primary public survey. If it is determined to be necessary we may also create up to 2 additional surveys that target specific groups. This could be a student survey, industry specific survey, business owner survey, visitor survey, etc. CivicBrand will run Facebook ads, not to exceed \$250 to promote the survey online to target residents in the city.

## **Meeting in a Box**

CivicBrand will develop a meeting in a box which is a presentation and Q&A guide that various members of the community and organizations can participate in to run their own meeting and focus group. This greatly expands our engagement reach and can be used for various organizations and groups such as HOAs, churches, and special interest groups. CivicBrand will develop a single set of materials and provide a single group training session for all those interested in conducting their own meeting. CivicBrand would rely on the staff team and committee to help promote and invite those that would be interested in participating.

## **Brand Audit**

CivicBrand will deliver a brand audit which is the summary of all of our findings. This is an essential document that we expect the city staff team and committee to review prior to the presentation of the brand strategy. This is not a deliverable that has an approval but rather a summary and documentation of our research and engagement.

## **Strategy Document**

Following the brand audit, CivicBrand will present the Strategy Document to both the Staff Team and Committee. This is the first major deliverable milestone that will need formal approval by the Staff Team. The strategy document identifies the brand principles, brand story and strategic direction that all following creative will be based on.

## **Design Concepts**

With approval on the Strategy Document, the CivicBrand team will begin exploring creative design and messaging concepts. CivicBrand will present our multiple internal rounds of revisions and present the concept that is our professional recommendation. We will then work with the staff team and committee on progressive rounds of revisions



until we have a concept approved by the staff team. Progressive revisions mean that as long as we are making progress towards narrowing in on a concept and heading in a single strategic direction we do not limit the number of rounds of revisions. Examples of non-progressive rounds of revisions would be wanting to go back to previous versions that were discarded, wanting to make changes to things that were approved in previous rounds, wanting to see additional concepts that aren't in line with the strategy, wanting to see additional concepts for the sake of additional concepts with no feedback or direction on the existing concepts, or requests that are made purely on personal taste rather than strategic direction.

### **Brand Assets**

With the final approval of design concepts, CivicBrand will then produce all the necessary file formats and assets and develop a brand portal which will house the brand assets as well as develop a brand standards guide that outlines the rules and usage of the brand assets. The brand standards guide is an asset that will require final approval by the staff team.

- Strategy Document
- Brand Guidelines
- Brand Portal
- Logo files in all necessary colors and file formats (jpg, png, pdf, eps)
- Edited Photos
- Project Documentary Video
- Brand Video
- Implementation Plan

### **Implementation Plan**

With the brand assets approved, CivicBrand will then develop the implementation plan. The staff team and committee will be involved in helping identify key projects, strategies, tools and milestones as well as identifying the impact and effort of key implementation plan steps to assist with prioritization. The implementation plan is not a deliverable that has approval.

### **Video Documentary**

CivicBrand will produce a documentary of the project that highlights the process and shows a behind the scenes look at how we got to the final product. Not every meeting and interaction will be filmed, but CivicBrand will film several key steps, meetings, interviews, focus groups, milestones along the way. The project documentary is not a deliverable that has approval, however the city staff team will have the opportunity to provide 1 round of edit notes should there be anything shown that they would like to

have omitted from the documentary. The project documentary will be anywhere from 10 minutes to 15 minutes long.

### **Brand Video**

CivicBrand will produce a brand video that highlights the community and new brand. This video will be under 3 minutes. We will work with the staff team to determine if we should create a single 3 minute video or if we would rather create a series of 3-4 shorter (15, 30 or 60-second) spots.

### **Timeline**

The project is estimated to take 12-months; however, there is no set deadline for the project. Each phase is dependent on the previous phase and there are numerous factors including travel, events, availability of participants for meetings and focus groups, and unknown rounds of revisions that we do not lock in a project timeline. Instead we constantly update the timeline based on where we are and set expectations for the next step and milestone that follows. This allows us to have clear timelines for each next step but remain agile enough to get the best result.

### **Activation / engagement event (Optional Add-on \$10,000)**

During community visit #2 the CivicBrand team will put on a Placemaking Activation Event. The goal of the event will be to engage the community directly in the built environment. This may be a stand alone event or in conjunction with an existing event. The CivicBrand team will look for opportunities to activate the space through interactive engagement, placemaking and tactical urbanism efforts. The details will be developed in coordination with the city staff team and branding committee and with a material budget not to exceed \$6,500.

\$80,000 - base fee

\$ 8,000 - brand video

\$10,000 - activation / engagement (optional)

**\$ 98,000 - Total Fee**

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT AN AGREEMENT WITH PAYNEARME TO PROVIDE  
PAYMENT PROCESSING SERVICES AND TO AUTHORIZE THE  
MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept an agreement with PayNearMe to provide payment processing services.
2. There is no budget effect since revenue is generated for PayNearMe through the convenience fee charged to the end user.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby enter into an agreement with PayNearMe to provide payment processing services.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the agreement.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Agreement

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: Wednesday, December 1, 2021

Subject: Payment Processing Services

From: Traci Shaffer, Deputy Treasurer

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

It is recommended City Council approve the proposed contract with PayNearMe for payment processing services.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

The City strives to provide the best service while maintaining responsible use of resources. Our citizens pay taxes to fund our operations, and the safety of both our employees and citizens in the collection of tax funds must be of highest priority. In addition, our citizens deserve a level of service and payment options that meet the needs of our diverse population.

### **DISCUSSION:**

The City of Wyoming Treasurer's Office has used Point and Pay as the credit card processor since 2015. It has become apparent that there is a need for expanded payment options. As a result, we conducted a survey of known payment processors. Among the companies surveyed, PayNearMe offered the lowest transaction fees with the greatest variety of payment options. PayNearMe has proposed fees that would result in a reduction of the card payment processing fees for our customer from 3% to 2.25%.

During the 2021 summer tax season, the Treasurer's Office processed approximately 1,960 cash transactions. While we accept mostly check and credit card payments, many of our customers prefer to pay in cash. We would like to reduce the amount of cash held in our office to protect our employees and reduce the number of customers coming to our facility with large amounts of cash. PayNearMe partners with retailers including WalMart, CVS, Family Dollar and 7-11 to accept bill payments, including cash. This partnership also allows our citizens to make payments outside of City Hall business hours at a time and location that may be more convenient to them.

In addition to lower fees and payment conveniences, PayNearMe offers a variety of services to accommodate the needs of our community and the changing arena of electronic and mobile communication and payment. These include a tool to notify delinquent customers by text or e-mail of pending water shut off and offer opportunity to make payment prior to shut off. We're hopeful that this feature will significantly reduce the final shut off list, resulting in a savings of labor costs.

The platform offers English and Spanish formats.



**BUDGET IMPACT:**

PayNearMe generates revenue through the processing fees that are passed on to the consumer. There are no fees charged to the City for software, or training, and unless the City chooses to absorb processing fees, the change should have no impact on our budget.

## PAYMENT PROCESSING (GOVERNMENT AGENCY) AGREEMENT

THIS PAYMENT PROCESSING AGREEMENT (the "Agreement") is made and entered into as of the "Effective Date" shown in the "Signature Block" below by the state, municipality or other governmental unit ("Agency") identified in the Signature Block and PayNearMe MT, Inc., a Delaware USA corporation, ("PayNearMe", each a "Party" and collectively with the Agency, the "Parties"). Agency performs various functions (e.g., policing) and/or services (e.g., utilities) for its customers, clients, taxpayers or citizens (as applicable, referred to below as "users" of the Network). These "Agency Services" are described in the Signature Block. If Agency would like to provide additional Agency Services, Agency will promptly so advise PayNearMe, request approval of the same, and if approved by PayNearMe, a mutually agreeable updating schedule will supplement this Agreement. PayNearMe operates a web-based technology information processing service and supporting infrastructure (the "Network") under the PayNearMe brand, which promotes commerce by enabling cash payments at various, conveniently located brick and mortar establishments (e.g., a 7-Eleven, referred to as "Payment Locations" below) and online payments via ACH and Card (the "Services", as further described in Schedule 3). PayNearMe's current Payment Locations are identified in Schedule 1. Agency will utilize the Network for the purpose of obtaining payment for Agency Services from its users and PayNearMe will be compensated pursuant to the terms of this Agreement, and PayNearMe will operate the Network and otherwise facilitate its service on behalf of all Network users as set forth below. All capitalized words not defined in the Agreement shall have the meaning ascribed to them in Schedule 3. Therefore, for lawful acknowledged consideration the Parties hereby further agree as follows:

1. Authorizations.

- a. By Agency. Agency hereby authorizes PayNearMe to receive payments on its behalf from Network users, directly and through all participating Payment Locations designated by PayNearMe through separate agreements between PayNearMe and the Payment Locations and (ii) facilitating ACH and Card payments from Agency's users on behalf of Agency for Agency Services, directly and through all participating processing parties and banks ("Processing Partners"). Agency expressly authorizes all Payment Locations referred to in Schedule 1 to accept payment on its behalf through the Network. If PayNearMe elects to expand the number of Payment Locations, then PayNearMe will seek Agency's approval to accept payments for Agency at such additional Payment Locations in advance and Agency can decline at its discretion. PayNearMe will also promptly advise Agency if any Payment Location chain elects to leave the Network or declines to accept payments for Agency. At PayNearMe's discretion, PayNearMe can elect to also act as each user's payment agent, in which case PayNearMe's "know your customer" obligations may vary, and Agency will reasonably cooperate with PayNearMe's efforts to fulfill related legal obligations. In any event, PayNearMe can require each user to register with PayNearMe and agree with PayNearMe's terms of use.
- b. By PayNearMe. During the Term, PayNearMe non-exclusively authorizes Agency wherever lawful to access and use the Network consistent with current Network access protocols in connection with payment for Agency Services. Agency specifically agrees not to modify any HTML code provided by PayNearMe at its election via the PayNearMe application programming interface ("API") for the purpose of constructing the PayNearMe paycode with Agency's own site or flow. All payment processing will be consistent with Network protocols as updated and noticed by PayNearMe to Agency from time to time, PayNearMe not being obliged to support prior versions of its APIs that are either more than one version or more than a year out of date.
- c. References and Links. The Parties will make reference to this relationship and link to the other's websites on mutually agreeable terms. PayNearMe may note that Agency participates in the Network on its website in any event for anti-fraud purposes, or to otherwise ensure that users can confirm such participation through internet query. Agency must display on its website (i) its name; (ii) a data privacy policy; (iii) a policy for transmission of Bank Account and routing information or Card details; and (iv) the address of its permanent establishment. Agency will use the PayNearMe logo in any user facing marketing materials referring to the ability to pay cash for Agency Services. To be clear, Agency will not use any Payment Location names, marks or logos without PayNearMe's prior written approval and will not attempt to white label the service. Agency also agrees to only use Payment Network marks in accordance with applicable Rules. When Agency integrates PayNearMe as a payment alternative on Agency's website, Agency will obtain PayNearMe's prior approval of such webflows, approval not to be unreasonably withheld, conditioned or delayed. Additionally, Agency will obtain PayNearMe's prior approval on all forms of paycodes utilized to stage transactions.
- d. Terms of Use. Access to and use of the Network by users is subject to PayNearMe's then applicable terms of use posted on its website, including its anti-money laundering policies. PayNearMe reserves the right to terminate or suspend use of the Network, if PayNearMe in good faith suspects any violation of such terms of use. Agency shall not knowingly engage in any illegal purpose or activity, violate any applicable laws, Rules or regulations, or authorize any fraudulent

## CONFIDENTIAL AND PROPRIETARY

Transaction or knowingly authorize for processing or credit, directly or indirectly, a Transaction which originated with any other source than Agency's legitimate users. Agency further confirms that paycodes issued for use on the Network will be unique to each user in order to avoid sharing by multiple users. Lastly, Agency will promptly notify PayNearMe after any written notice from any regulatory or law enforcement authority alleging that the Agency Services or Agency's related operations do not comply with applicable laws, Rules, or regulations.

- e. Password and Other API and Portal Access Credentials; Web Processing. If Agency receives a password and/or other API or portal access credentials (together "Access Credentials") from PayNearMe, Agency will: (a) keep the Access Credentials confidential; (b) be liable for all action taken by any user of the Access Credentials; and (c) promptly notify PayNearMe if Agency believes (i) the Access Credentials have been compromised, (ii) the API and/or portal has been or potentially can be accessed with compromised Access Credentials, or (iii) the confidentiality of the Services' data or any sensitive information has been compromised by use of the Access Credentials. Agency shall disclose to PayNearMe all URLs for which Agency processes Transactions before processing.
- f. Term. The "Term" of this Agreement begins on the Effective Date and continues for three (3) years from the date the first production payment is processed (the "Production Ready Date") and will automatically renew for successive one (1) year terms, unless Agency or PayNearMe provide the other party with not less than six (6) months prior written notice before such automatic renewal date that such party elects not to automatically renew the Agreement or sooner terminated under Section 9. The Term may be extended upon mutual agreement of the Parties.

## 2. Intellectual Property.

- a. Agency will own and retain all right, title, and interest in and to the Agency Services. PayNearMe agrees not to copy, alter, modify, or create derivative works of the Agency Services or otherwise use the Agency Services in any way that violates this Agreement. Agency does not grant to PayNearMe any license, express or implied, to the intellectual property rights of Agency or its licensors.
- b. PayNearMe and its licensors shall own and retain all right, title, and interest in and to the Network. Agency agrees not to copy, alter, modify, or create derivative works of the Network or otherwise use the Network in any way that violates this Agreement. PayNearMe does not grant to Agency any license, express or implied, to the intellectual property rights of PayNearMe or its licensors.
- c. Each Party shall retain all right, title and interest in and to all messages, images, files, data and other information transmitted to the other Party (collectively, the "Data"), provided, however, that each Party hereby grants to the other a worldwide, royalty-free, non-exclusive license to use the Data for the purposes of fulfilling its obligations hereunder. To be clear, each Party may otherwise lawfully use Data in an aggregated and anonymized form and neither Party will have any interest in such information of the other Party. Neither Party will include any personally identifiable Data or other exchanges of information without the prior written approval of the other Party, except as set forth in the Signature Block. More specifically, Agency agrees to utilize an anonymized identifier to ensure that recurring use can be accurately attributed to the individual user for compliance purposes. Each Party is prohibited from selling personally identifiable Data or retaining, using, or disclosing it for any purpose other than for the purpose of this Agreement, or as otherwise permitted by the California Consumer Privacy Act ("CCPA"). Any personally identifiable Data shared between Agency and PayNearMe shall not be considered to be "sold" as defined by the CCPA and shall further not be collected or used except as necessary under this Agreement. Further, Agency shall not impose a requirement on Accountholders to provide any personal information as a condition for honoring ACH or Card payments unless such information is required to provide the delivery of Agency Services or Agency has reason to believe the identity of the person presenting the Bank Account and routing information or Card information may be different from that of the Accountholder.
- d. Despite the foregoing, each Party hereby authorizes the other to use the trade names and marks of the other on their respective websites and within their respective offerings as reasonably necessary to fulfill their obligations under this Agreement, subject to then applicable trademark usage guidelines and prior written approval. All usage inures to the benefit of the owner of such names and marks.
- e. It is the express intent of the Parties that no jointly owned intellectual property be created under this Agreement. Nothing in this Agreement precludes a Party from engaging directly or through third parties in any business or using any technology similar to the other Party's business or technology, provided that no use is made of the other Party's Confidential Information as described in Section 6. Each Party shall retain all right, title and interest in and to its respective patents, copyrights, trade secrets and other forms of intellectual property.

- f. Agency acknowledges that PayNearMe is a software as a service provider, not a software licensor, and that this Agreement does not transfer possession of or rights in any of PayNearMe's proprietary computer software and/or hardware that PayNearMe uses in providing its Services to Agency.
- g. Agency acknowledges that PayNearMe is free to encourage Network users making payments to Agency to also use the Network to make payments to third parties or to avail themselves of any related PayNearMe offerings in the future, subject to customary opt outs, PayNearMe's privacy policy and applicable laws.

3. **Payment Procedures.**

a. **General Payment Procedures.**

- i. **Forms of Payment.** As of the Effective Date of this Agreement, Agency may utilize the Network to accept user payments by cash, credit, debit, or ACH. Agency may elect to accept some or all forms of payment through the Network. The elected forms of payment appear in the Signature Block of the Agreement. PayNearMe reserves the right to offer additional forms of payment in the future, and the Agreement may be amended in writing should Agency elect to utilize the Network to accept additional forms of payment.
- ii. **Fees.** All fees to be paid pursuant to the Agreement are set forth in Schedule 2, the Fee Schedule.
- iii. **Monthly Volume and Average Payment Amount.** Agency represents that the estimated volume of Agency Services transactions per month ("Monthly Volume") and the estimated average transaction dollar amount for the Agency Services ("Average Payment Amount"), broken down by tender type as appearing in Schedule 2, are each good faith estimates and that there is a reasonable basis for each such estimate. Agency shall use commercially reasonable efforts to notify PayNearMe if Agency anticipates any material change in Agency's Monthly Volume and Average Payment Amounts, and upon request of PayNearMe from time to time, Agency will update such estimates. Material changes in either the Monthly Volume or Average Payment Amount may, at PayNearMe's option, result in PayNearMe amending the terms of this Agreement, including, but not limited to, permit holding funds and/or altering the Agency funding schedule if PayNearMe reasonably deems it necessary to protect against financial loss. PayNearMe may impose a limit on the dollar amount of transactions that it will process for Agency, either cumulatively or separately by tender type, which limit may be changed by PayNearMe from time to time, upon ninety (90) days' written notice to Agency.
- iv. **Taxes.** Payments remitted to Agency received through the Network will not include any applicable taxes that PayNearMe or the Payment Location is obliged to withhold. As of the Effective Date, PayNearMe is not aware of any taxes applicable to accepting or processing payments pursuant to this Agreement, except for state sales taxes on transaction processing paid by PayNearMe. Agency will determine whether any taxes or other charges should be included in the payment made by the user for the Agency Services and will remit as required by law, unless PayNearMe or the Payment Location has previously remitted them. The Parties will reasonably cooperate to lawfully minimize and account for any applicable transaction taxes and effectively report them to each other.
- v. **Constructive Receipt.** Subject to Chargebacks and Returns as applicable, actual receipt of payment for Agency Services from users by PayNearMe and/or Payment Locations on behalf of Agency in connection with cash payments and Payment Confirmation of user's payment by PayNearMe to Agency in connection with ACH & Card payments, shall be deemed receipt of payment from users by Agency and will satisfy the obligations owed to Agency by users in the amount of the applicable payment by the user, even if payment is not received by Agency from PayNearMe, rather Agency's recourse is to PayNearMe. As a result, the user is given an immediate and irrevocable credit on Agency's records in the amount of the payment (less fees) at the time of Payment Confirmation by PayNearMe, excepting only obvious errors, fraud, Chargebacks and Returns and subject to applicable Rules. In the event that such credit on Agency's records is not substantially simultaneous, then, if required or requested by PayNearMe, Agency will promptly electronically notify PayNearMe when such credit is so applied. Agency acknowledges and agrees that it (i) has no (and shall not assert any) claim for payment against any user after receipt of Payment Confirmation as set forth above and (ii) will not otherwise permit or take any action or fail to take any action adverse to a user as a result of any failure to receive payment from PayNearMe for the corresponding amount. For example, if the payment is intended to reduce a pre-existing obligation (e.g., a water bill), the obligation will be reduced, as if the payment had been received. In this manner, the risk to the user of having to pay twice is eliminated. PayNearMe will not be obligated to participate in any legal disputes between



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user and Agency, except to the extent resulting from PayNearMe's breach of this Agreement, and Agency will reimburse PayNearMe for any such participation costs as they are incurred pursuant to Section 8 below.

- vi. Reporting and Support. PayNearMe will provide Agency with access to standard real-time reporting supporting all transactions processed for the Agency Services through the Network, including any applicable taxes and fees, and with related technical support without additional charge.
  - vii. Compliance with Law; Regulation; Payment Network Rules. Each Party agrees to comply with all applicable state and federal laws. Each Party will report any non-compliance promptly to the other Party. If Agency experiences a data breach that exposes any Confidential Information, Agency shall be responsible to PayNearMe for any fines, fees and overhead and legal fees required for PayNearMe to complete its responsibilities relative to the breach. The Parties will reasonably cooperate in good faith to minimize fraud, theft and other abuse of the Network and to discourage use of the Network for any illegal purposes. Agency will comply with PayNearMe's and applicable Payment Location's anti-money laundering policies as updated and reasonably noticed to Agency from time to time. In the event that Agency's payment or collection practices are subject to legal restrictions that may apply to PayNearMe's obligations under this Agreement (e.g., additional information required to be printed on the receipt), then prior to using the Network, Agency will (i) determine if any aspects of such regulation extend to PayNearMe's performance and (ii) advise PayNearMe of any measures considered necessary or desirable to conform to such regulation; (iii) in which case, the Parties will negotiate reasonably and in good faith whether such additional measures can be implemented through the Network and at what and whose expense. If the Parties are unable to reach agreement on such matters, then either Party can elect to terminate this Agreement for convenience on three business days' notice. If the Parties do so agree, the Parties will implement such measures as agreed.
  - viii. Suspension. Either Party can elect to suspend the initiation of new transactions on notice to the other Party in the event that it is not receiving or processing funds in the manner contemplated by this Agreement, due to legal or regulatory issues or due to potential intellectual property rights claims of third parties, until such time as the Parties mutually agree to resume processing. Such suspension may be either selective (e.g., by type of payment or tender type, user or location) or general with a goal of reasonably minimizing inconvenience to users, Payment Locations, Processing Partners and Agency. Each Party will use reasonable, good faith efforts to design and operate its respective information systems in order to be able to selectively suspend transaction processing (both paycode issuance and payment) by user, state and Payment Location and other mutually agreeable parameters.
  - ix. Recoupment and Set-Off. Agency hereby authorizes PayNearMe to debit any outstanding/uncollected amounts owed by Agency, such as PayNearMe Basic Fees, Chargebacks, Returns, and dishonored debit Entries from: (i) Agency's Bank Account; (ii) the Reserve Account; and/or (iii) any other amounts PayNearMe may owe Agency under this Agreement. In the event the Agency's Bank Account or Reserve Account does not have sufficient funds, the amounts shall be immediately due and payable by Agency without any further demand from PayNearMe. Despite the foregoing, PayNearMe can elect to suspend the initiation of new transactions until such amounts are paid.
  - x. Agency Reserve Requirement. Agency agrees that PayNearMe may, in its sole discretion, require Agency to fund and maintain a minimum cash balance in a Reserve Account (the "Reserve") in an amount that reflects PayNearMe's reasonable assessment of the risk related to Agency's financial and performance obligations under this Agreement in order to ensure that sufficient funds are maintained to cover anticipated Chargebacks and Returns if such rates are higher than anticipated. The balance due to the Agency from the Reserve will not accrue interest unless required by applicable laws. Although the Agency acknowledges that the Reserve is a general obligation of PayNearMe, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Agency that is held by PayNearMe or Bank, the Agency grants and acknowledges that the Bank and PayNearMe have a first priority security interest in the Reserve and, at Bank or PayNearMe's request, will provide documentation to reflect this security interest. The rights conferred upon PayNearMe in this Section are not intended to be exclusive of each other or of any other rights and remedies of PayNearMe under this Agreement, whether at law or in equity.
- b. Cash Payment Procedures. In addition to the General Payment Procedures above, the Parties agree to the following procedures in connection with cash payments.
- i. Cash Payment Mechanics. After a Network user tenders a cash payment with the PayNearMe enabling token or code and the Payment Location obtains PayNearMe's authorization to accept the cash payment, (i) the Payment

Location will provide users with a receipt or transaction identifier upon payment that will identify the Agency and indicate that payment has been made on the applicable date, or that will enable access to such information, and (ii) PayNearMe will electronically confirm such cash payment to Agency. After receipt by the Payment Location, PayNearMe will then initiate an ACH transfer from PayNearMe's FDIC-insured account for the benefit of all its customers to Agency's FDIC-insured US Bank Account in the amount of the payment net of its fees (including fees due the Payment Location) and any applicable taxes within the number of banking days set forth in the "Settlement Timing" section of the Signature Block. In the event the PayNearMe Basic Fee is "Embedded" (meaning the Agency will absorb the PayNearMe Basic Fee rather than expose it to their users as a "Convenience Fee"<sup>1</sup>), then PayNearMe may withhold the PayNearMe Basic Fee on settlement from the Agency rather than invoice Agency for such PayNearMe Basic Fee. Agency will promptly refund any overpayment after customary reconciliation processes. Late payments bear interest at the rate of one percent per month or any lower legal maximum. Where Agency elects to incorporate enabling tokens into its own billing materials for circulation to users, Agency will first obtain PayNearMe's quality certification prior to production runs, such certification not to be unreasonably delayed, conditioned or withheld.

- ii. Chargebacks. All cash payment transactions are final and there will be no Chargebacks or reversals for cash payments, to the maximum extent allowed by law. Agency can elect to cancel or adjust cash transactions with users after payment or reimburse its users by separate means, subject to the limitations of Section 3(a)(v) above.
- c. Card & ACH Payment Procedures. In addition to the General Payment Procedures above, the Parties agree to the following procedures in connection with ACH and Card payments.
  - i. Acceptance and Authorization.
    1. Cards. If Agency elects to accept Card payments via the Network, PayNearMe will obtain a prior Authorization for all Card sales (including authorization by proxy to PayNearMe). If Card Authorization cannot be obtained or is denied, PayNearMe will decline the Transaction. PayNearMe will not obtain or attempt to obtain Card Authorization for any amount not authorized by Cardholder. Agency acknowledges that a Card Authorization provides only that the Cardholder account is believed by the authorizing entity to have sufficient credit available to cover the amount of the current sale, that a Card Authorization is not a guarantee of payment, and will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card. Receiving a Card Authorization shall not relieve the Agency of liability for Chargebacks.
    2. ACH. If Agency elects to accept ACH payments via the Network, Agency understands that PayNearMe, acting as a Third-Party Sender, may be required to obtain Bank's written approval to initiate or continue to initiate Entries for Agency, which approval Bank may rescind upon notice to PayNearMe. PayNearMe will obtain Bank Account and routing information from users for all payments that it processes. Agency acknowledges that the information provided by the user does not indicate that sufficient funds are available to cover the amount of the current Transaction, that PayNearMe's acceptance of Bank Account and routing information for payment is not a guarantee of payment, and that such acceptance will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving use of a fraudulent account. Receipt of Bank Account and routing information by PayNearMe shall not relieve the Agency of liability for Returns.
  - ii. Presentment and Payment.
    1. General. PayNearMe shall accept and process for Agency all valid Transactions authorized by Agency in accordance with Section 3(c)(i) above and shall present the same to the appropriate Banks or Card Issuers for collection against Accountholder accounts. All presentment and assignment of Transactions, collection therefor and re-assignment or rejection of Transactions are subject to the terms of this Agreement and the Rules. PayNearMe will electronically confirm to Agency that a payment has been made on the applicable date when a Transaction is authorized by the Agency. PayNearMe will then initiate an ACH transfer from PayNearMe's FDIC-insured account for the benefit of all its merchants to Agency's FDIC-insured US Bank Account in United States Dollars in the amount of the payment and any applicable taxes, net of PayNearMe's Fees, including PayNearMe Basic Fees, Chargebacks, Returns, penalties, late submission charges, and other items charged by

<sup>1</sup> To be clear, the term "Convenience Fee" is narrowly defined in this Agreement to mean a supplemental charge for payment processing that is exposed to users (and borne by users rather than absorbed by the merchant) and should not be confused with any other payment industry customs or uses.

PayNearMe's Processing Partners for processing ACH or Card payments, within the number of banking days set forth in the "Settlement Timing" section of the Signature Block. The Parties may mutually agree upon an alternative settlement method or frequency. In the event the PayNearMe Basic Fee is Embedded rather than a Convenience Fee, then PayNearMe may withhold the PayNearMe Basic Fee on settlement from the Agency rather than invoice Agency for such PayNearMe Basic Fee; and PayNearMe may debit Agency's Bank Account for all other charges. PayNearMe may refuse to accept any Transaction or revoke its prior acceptance of any Transaction in the following circumstances: (i) the Transaction was not made in compliance with any terms of this Agreement; (ii) the Accountholder disputes his or her liability for any reason; or (iii) the Transaction was not directly between Agency and the Accountholder. Agency will pay PayNearMe, as appropriate, any amount previously settled to Agency for a Transaction not accepted or later revoked by PayNearMe. Agency hereby gives its written permission that PayNearMe may disclose detailed information about Transactions, individually and in the aggregate, and other information relating to Agency to third parties that require the information to facilitate the Services described in this Agreement, or as requested by regulatory authorities. Agency shall have the sole right to receive payment of any Purchase presented by Agency and paid by PayNearMe to Agency unless and until there is a Chargeback or Return. PayNearMe will inform Agency of any Chargebacks and Returns, following which Agency may attempt to collect from Accountholders for the related Transaction(s).

2. ACH Rejection. Agency agrees that PayNearMe and/or its Bank may reasonably reject any Entry issued by Agency if, for example, Agency fails to comply with the terms of this Agreement. PayNearMe has no obligation to notify Agency of the rejection of an Entry but will use reasonable efforts to do so. PayNearMe shall have no liability to Agency for the non-arbitrary rejection of an Entry and shall not be liable to pay interest to Agency even if the amount of Agency's payment order is fully covered by the Agency's Bank Account or the Reserve Account.
3. ACH Cancellation or Amendment. Agency shall have no right to cancel or amend an Entry after its receipt by PayNearMe. However, PayNearMe may, at its option, accept a cancellation or amendment by Agency issued in accordance with PayNearMe's procedures and PayNearMe shall use reasonable efforts to act on the request by Agency prior to transmitting to the ACH processor. PayNearMe shall have no liability if such cancellation is not effected. No later than the Settlement date of the reversing Entry, Agency shall notify the Accountholder of any reversing Entry initiated to correct an error and the reason for the reversal. If PayNearMe accepts a cancellation or amendment of an Entry, Agency hereby agrees to indemnify, defend all claims, and hold PayNearMe harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by PayNearMe as the result of its acceptance of the cancellation or amendment.
4. ACH Reversal. PayNearMe will use reasonable efforts to effect a reversal when Agency's request is (i) made within five (5) Business Days of the effective Entry date for the Entry or File to be reversed, (ii) accompanied by a Reversal/Cancellation request, and (iii) complies with all of the applicable Rules. Under no circumstances shall PayNearMe be liable for interest or related losses if the requested reversal of an Entry is not effected. Agency shall reimburse PayNearMe for any expenses, losses, or damages it incurs in effecting or attempting to effect the Agency's request for reversal of an Entry.
5. ACH Error. PayNearMe has no obligation to discover and shall not be liable to Agency for errors made by Agency. PayNearMe shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Agency. Notwithstanding the foregoing, if Agency discovers that an Entry it has initiated was in error, it shall notify PayNearMe of such error. In the event that Agency makes an error or issues a duplicate Entry, Agency shall indemnify, defend all claims, and hold PayNearMe harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by PayNearMe as a result of the error or issuance of duplicate Entries.
- iii. Honoring ACH Payments and Cards. Agency may request a maximum Transaction amount provided such maximum Transaction amount is within the Compliance and Risk Transaction Limits set forth in the Signature Block, in compliance with applicable Rules, and such request must be made in writing and approved by PayNearMe. Agency shall not require any Accountholder to pay any part of any fee imposed upon Agency by this Agreement; however, if Agency maintains compliance with applicable Rules, and provides forty-five (45) days' written notice to PayNearMe, Agency may assess a surcharge, basic fee, cash discount or service fee.
- iv. Chargebacks & Returns. Contemporaneously with each Purchase, a contingent and un-matured claim for Chargebacks and other Returns accrue against Agency in favor of PayNearMe to the extent PayNearMe is required, or exercises its right, to pay to the Bank and/or Card Brands with respect to any fees, discounts, user credits and adjustments, charges, fines, assessments, penalties or other items, which may in turn be charged back

to Agency by PayNearMe. Agency acknowledges that a Payment Confirmation following an ACH Entry simply means that a payment has been submitted to the Network and further, Agency recognizes that such payment may be disputed by the user or returned by the Bank. When this occurs, PayNearMe will notify Agency and funds will be deducted from Agency's account as further described in Section 3(a)(ix). Agency agrees that it is fully liable to PayNearMe for all Chargebacks and Returns. Agency agrees to cooperate with PayNearMe in the event PayNearMe disputes a claim related to a Chargeback or Return and will timely provide necessary information regarding a Transaction and/or Accountholder in order for PayNearMe to properly dispute a claim. If Agency has excessive Chargebacks or Returns in violation of PayNearMe's Chargeback & Return policy, then (i) Agency shall be responsible to PayNearMe for any related fines and third-party fees; (ii) at PayNearMe's sole discretion, Services can be immediately suspended until Agency obtains PayNearMe approval of and implements a Chargeback and Return remediation plan; and (iii) if in any calendar month within the six (6) months immediately following resumption of Services (after implementing an approved remediation plan) and Agency receives excessive Chargebacks or Returns, then PayNearMe can immediately terminate this Agreement upon written notice to Agency. Agency agrees to accept any Chargeback or Return where the Accountholder disputes the validity of the Transaction according to the Rules. Agency is liable for Chargebacks and Returns for any Transaction that PayNearMe reasonably determines that Agency has in any way failed to comply with the Rules, PayNearMe's policy, this Agreement, or that PayNearMe reasonably determines (x) that the Transaction record is fraudulent, except to the extent such fraud is perpetrated by PayNearMe or its directors, officers, employees or agents, or (y) that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of Agency or Agency's agents or employees.

- v. Disbursements and Credits. Agency's policy for the adjustment or cancellation for services rendered, as well as any other special circumstances or other charges, shall be established and posted in accordance with the Rules, to the extent required. If Agency does not make any such required disclosures, a full refund in the form of a credit to the Accountholder's account must be given. Agency shall not refund cash to a Cardholder who paid for the item by Card. Credits must be made to the same Bank Account or Card account number on which the original Transaction was processed. Disbursements and credits may only be issued when the good and available funds in the Agency's Bank Account is equal to or greater than the credit amount.
- vi. Agency's Additional Undertakings in Connection with ACH and Card Payments. Agency shall not engage in any of the following: (a) Impose a requirement on Accountholders to provide any personal information as a condition for honoring ACH or Card payments unless such information is required to provide the delivery of Agency Services or Agency has reason to believe the identity of the person presenting the Bank Account and routing information or Card information may be different from that of the Accountholder; (b) Contact Accountholders except as required and permitted by the Rules or in accordance with Agency's normal business in the delivery of its Agency Services; (c) Receive any payment from an Accountholder to prepare and present a Transaction for the purpose of affecting a deposit to the Accountholder's account; (d) Transmit any over-the-counter cash advance transaction either on the Card of the Agency or the Card of any other Party; (e) Obtain under any circumstance authorization for, nor process a cash advance or other form of a credit Transaction on, any Card that the Agency owns or controls; (f) Knowingly engage in any illegal purpose or activity, violate any applicable laws, rules, or regulations, or authorize any fraudulent Transaction or knowingly authorize for processing or credit, directly or indirectly, a Transaction which originated with any other source than Agency's legitimate users; (g) Authorize any Transaction solicited by a telemarketer<sup>2</sup> absent prior written approval from PayNearMe; (h) Authorize any Transaction for internet or online gambling transactions unless Agency, (1) is appropriately licensed, if applicable, (2) is operating legally in such jurisdiction, (3) blocks minors from playing, (4) blocks players from other jurisdictions where gambling is unlawful, and (5) has received written per jurisdiction approval from PayNearMe; or (i) Authorize any Purchase representing the refinancing of an existing obligation of a Cardholder, unless approved by PayNearMe in writing, including, but not limited to obligations: (1) previously owed to Agency; (2) arising from the dishonor of a Cardholder's personal check; and/or (3) representing the collection of delinquent accounts on behalf of itself or third parties.
- vii. Non-Imprint Transactions; Notice of Erroneous/Unauthorized Transfers. Agency waives the right to dispute Chargebacks arising from a failure to receive an Imprint and assumes any and all other risks attendant to such

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<sup>2</sup> A telemarketer is a salesperson soliciting a prospective customer to buy products or services over the phone. The collection of debt over the phone is not telemarketing.



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Transactions. Agency shall regularly and promptly review all statements of account related to its processing account. Agency agrees to notify PayNearMe within three (3) business days of any discrepancy between Agency's records and those provided by PayNearMe, the Agency's Bank, or with respect to any transfer that Agency believes was not authorized by Agency or user. If Agency fails to notify PayNearMe in writing within forty-five (45) calendar days after the date that PayNearMe makes such statement of account or other report available to Agency, Agency will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer.

- viii. Telephone Transactions. In the case of telephone-based payments (telephone-initiated entries, "TEL"), Agency will utilize commercially reasonable methods to establish the identity of the Accountholder, such as through use of a directory or other database, and hereby warrants to PayNearMe that each such Accountholder has authorized Agency to process Card payments and submit ACH Entries to their accounts for Transactions to which the Accountholder has agreed. Agency will provide the Accountholder with all applicable disclosures and information as required by the Rules.
- ix. Compliance with Rules. Agency agrees (i) to assume the responsibilities of an originator under the ACH Rules and to be bound by the ACH Rules as applicable and in effect from time to time; (ii) to grant PayNearMe and Bank ongoing access to audit Agency and any Entry that Agency has transmitted to PayNearMe for transmission to Bank, including physical site audits; and (iii) that PayNearMe or Bank may at any time refuse to process an Entry for Agency. Further, in accordance with NACHA rules Agency is required to comply with the following: (a) for prearranged payment and deposit entry paper ("PPD") authorization, Agency is required to collect, preserve, and secure user's written authorization, (b) for TEL entries, Agency is required to obtain authorization either by collecting, preserving, and securing voice authorization from the user at the time of authorization or by delivery of a written notice to the user prior to initiation of the Debit, (c) for internet/mobile-initiated entries ("WEB"), Agency is required to display the authorization language on a web browser and retain the user's acceptance of such authorization language, authentication of the user's identity, validation of the routing number, and account validation by fraudulent monitoring detection systems. Depending on the product integration, some of these processes are handled by PayNearMe, the third party sender. If the user maintains a business bank account, all transactions will be processed as cash concentration or disbursement ("CCD") transactions, irrespective of the form of ACH authorization. Regardless of standard entry class ("SEC") code or transaction type, when Agency connects to PayNearMe via API, Agency is required to collect, preserve, and retain the authorization and authentication of the Transaction for a minimum of two (2) years.
- x. Data Security. In the event that Agency receives Card information in connection with the processing services provided under this Agreement, Agency agrees that it will comply with, and not use Card information for any fraudulent purpose or in violation of, any Payment Network Rules, including but not limited to Payment Card Industry Data Security Standards (PCI DSS) or applicable law. If at any time Agency believes that Card information has been compromised, it must notify PayNearMe promptly and assist in providing notification to the proper parties. Agency must ensure its own compliance, and that of any third party service provider it utilizes, with all Security Guidelines. If any Payment Network requires an audit of Agency due to a data security compromise event or suspected event, Agency agrees to cooperate with such audit. Agency may not use any Card information other than for the sole purpose of completing the transaction authorized by the user for which the information was provided to Agency, or as specifically allowed by Network Rules or required by law.
- xi. Representation and Warranties. Agency represents and warrants both as of the Effective Date and during the Term of the Agreement that (a) All information provided to PayNearMe is and remains true and complete in all material respects; (b) Each Purchase presented to PayNearMe for collection is genuine and is not the result of any fraudulent or prohibited Purchase and is not being deposited on behalf of any business other than Agency; (c) Agency is engaged in a legitimate business and each Transaction is the result of a bona fide ACH or Card Transaction for the direct purchase of Agency Services by the Accountholder for the amount stated on any receipt or Sales Draft; (d) Agency has performed or will perform all of its obligations to the Accountholder in connection with the ACH or Card Transaction evidenced thereby; (e) Agency has complied with the Agreement's procedures for accepting ACH and Card payments, and the Transaction does not involve any element of credit or debit for any purpose other than as set forth in this Agreement; (f) Any Credit Voucher, price adjustment or refund which it issues represents a bona fide refund or adjustment on a sale by Agency with respect to which a Transaction has been accepted; and (g) For all ACH or Card Transactions that Agency requests PayNearMe to originate, (1) each Accountholder has authorized the debiting and/or crediting of its account; (2) each Transaction is for an amount

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the user has agreed to; and (3) each Transaction is in all other respects properly authorized; (h) Agency will reimburse Bank for any loss Bank incurs, including Bank's reasonable attorney's fees and legal expenses, as a result of the breach of a warranty made by Bank under the applicable Rules in connection with any Entry that Bank originates or Card transaction that Bank acquires upon the instructions received from Agency, except to the extent that the loss resulted from Bank's own gross negligence or intentional misconduct.

4. **Agency's Business.** Agency will immediately notify PayNearMe of any bankruptcy, receivership, insolvency or similar action initiated by or against Agency or any of its or their subsidiaries and will, to the extent permitted by applicable laws, include PayNearMe on the list of creditors filed with the Bankruptcy Court. Agency must notify PayNearMe in writing if Agency sells or closes its business within seven (7) business days before the change or upon request. Agency is liable to PayNearMe for all losses and expenses incurred by PayNearMe arising out of Agency's failure to report changes to any information provided by Agency in the Agreement and as part of the onboarding process. PayNearMe may immediately terminate this Agreement upon a material change to the information provided to PayNearMe in the Agreement and as part of the onboarding of Agency.

5. **Cooperation.** During the term and for a reasonable time thereafter, each Party will promptly respond to the other Party's reasonable requests for information related to this Agreement. Agency will participate in regular compliance reviews with PayNearMe from time to time as determined by PayNearMe to ensure Agency's compliance with the Agreement, which reviews may be in person, by phone or by exchange of written documentation in PayNearMe's sole discretion. Upon request, Agency will promptly provide PayNearMe with any necessary permissions or consents, financial statements or other information reasonably requested by us to perform credit risk, security, qualification, compliance and other reviews related to this Agreement, or Agency's financial condition. Agency authorizes PayNearMe and PayNearMe's Processing Partners to obtain information from third parties when performing credit risk, security, qualification, compliance and other reviews. PayNearMe, its Processing Partners, or the Bank may perform a reasonable audit of Agency's records related to its performance under this Agreement with 30 days' advance written notice, during the normal business hours. Financial statements shall be prepared in accordance with generally accepted accounting principles. In addition, Agency will use its best efforts to promptly respond to all requests by PayNearMe for user information but only to the extent required for PayNearMe to respond to any regulatory request or government order for such information or for PayNearMe to be in compliance with applicable laws, regulations, or rules. Except for the set-up fee payable to PayNearMe set forth in Schedule 2, each Party will bear its own expenses in implementing the terms of this Agreement. Without limiting Agency's obligations under Section 1(c), Agency will refer to the Network and utilize PayNearMe branding in all of its user facing materials and collateral that reference available payment options, if appropriate in Agency's judgment. *Unless otherwise provided in the optional Cooperation Schedule, Schedule 4*, Agency will act as a reference account for PayNearMe upon reasonable request and participate in mutually acceptable press releases and case studies from time to time. Neither Party will issue any press release(s) or make or authorize other public statements referencing the other Party without the prior approval of the other Party, and in the event that a PayNearMe Payment Location is named in such release or statement, prior approval of the applicable Payment Location, such as 7-Eleven, is required. Agency acknowledges that Agency's violation of the terms of the preceding sentence by referring to any Payment Location by name, mark or logo will interfere with PayNearMe's contractual relationship with the Payment Location in a very disruptive manner that is difficult to quantify and reduce to actual damages. Therefore, if Agency refers to any Payment Location in any unauthorized public statement, then PayNearMe can elect to terminate this Agreement for convenience on notice to Agency. Each Party is responsible for providing support to its own users.

6. **Confidential Information.**

- a. Each Party acknowledges that the performance of this Agreement will potentially require the disclosure of trade secrets, proprietary and confidential information and know-how (collectively, "Confidential Information"). Confidential Information expressly includes any statements provided to Agency disclosing pricing and fees, and the Data in connection with this Agreement. Each Party agrees not to disclose or make such Confidential Information available to third parties (other than to a Party's "Representatives") without the other Party's written permission. A Representative is any employee, contractor, director, auditor, attorney or similar agent of a Party that has a reasonable need to know the Confidential Information and a corresponding obligation not to disclose or misuse it. Each Party is responsible for its Representative's breach of this Section. Confidential Information does not include any information which: (i) was known prior to its receipt; (ii) was or becomes a matter of public information through no fault of the receiving Party; (iii) is acquired from a third party entitled to disclose the information to the receiving Party; (iv) was developed independently by receiving Party; or (v) is disclosed pursuant to the order or requirements of a court, administrative agency, governmental body or other customary rule making authority. During the Term, each Party may publicly acknowledge that Agency has contracted for use of the Network subject to the limitations set forth in Section 5.
- b. PayNearMe has an established information security program containing appropriate administrative, technical and physical measures to protect Agency Data (including any personally identifiable information) against accidental or

unlawful destruction, alteration, unauthorized disclosure or access consistent with applicable laws and data processing industry standards and will abide by such program. If PayNearMe becomes aware of an actual security breach (as defined in any applicable law) or any other event that compromises the security, confidentiality or integrity of Agency's personally identifiable information (an "Incident"), PayNearMe will timely take appropriate actions to contain, investigate and mitigate the Incident and so advise Agency. In the event that applicable law requires notification to individuals and others of such an Incident, PayNearMe will take additional mitigation steps including providing assistance with the drafting and mailing of such notifications. PayNearMe and Agency will mutually agree on the content and timing of any such notifications, in good faith and as needed to meet applicable legal requirements. At Agency's request from time to time, PayNearMe will provide Agency with copies of any routine Service Organization Control 1 reports ("SOC 1 Reports") (or any successor reports thereto) directly related to the Network. SOC 1 Reports are PayNearMe Confidential Information and Agency will not distribute or allow any third party (other than its independent auditors) to use any such report without the prior written consent of PayNearMe.

7. **No Limitation for Chargebacks and Third Party Fines and Fees.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, AGENCY SHALL BE LIABLE FOR ALL THIRD-PARTY FINES AND FEES INCLUDING PAYMENT NETWORK FINES AND FEES, RETURNS, CHARGEBACKS AND CREDITS OR OTHER BANKING OR PAYMENT NETWORK LIABILITY CAUSED BY AGENCY IN CONNECTION WITH THE SERVICES PROVIDED BY PAYNEARME PURSUANT TO THE AGREEMENT.

8 **Indemnification.**

- a. **Agency Indemnity.** Agency agrees to defend, indemnify and hold PayNearMe (including its employees, directors, agents and affiliates) harmless from any and all liability, loss, damage or expense (including, without limitation, reasonable attorneys' fees and experts' charges) that PayNearMe may incur as a result of a third party claim, demand, or action relating to (i) a dispute between Agency and Accountholder except for any claim arising in connection with breach of the Agreement, Rules or applicable laws by PayNearMe or its officers, employees, subcontractors or agents; (ii) any defense, dispute, offset, or counter claim in connection with a Transaction which may be raised by any Accountholder under the Rules or other relevant state or federal statutes or regulations; except for any claim arising in connection with breach of the Agreement, Rules or applicable laws by PayNearMe or its officers, employees, subcontractors or agents; (iii) a breach of the security of the Agency's system safeguarding Confidential Information; (iv) any violation by Agency of applicable Rules, laws, or regulations; (v) any fraud by Agency and Accountholders; and (vi) the Agency Services. PayNearMe shall promptly notify Agency of such claim, reasonably cooperate in its defense and allow Agency to control its defense and settlement. However, under no circumstances may Agency create an obligation on or acknowledge liability of PayNearMe.
- b. **PayNearMe Indemnity.** PayNearMe agrees to defend, indemnify and hold Agency (including its employees, directors, agents and affiliates) harmless from any and all liability, loss, damage or expense (including, without limitation, reasonable attorneys' and experts' charges) that Agency may incur as a result of a third party claim, demand, or action relating to (i) any violation by PayNearMe of applicable Rules, laws or regulations; (ii) any fraud by PayNearMe; (iii) PayNearMe's failure to safeguard Accountholder information in violation of applicable laws; and (iv) the PayNearMe Network. Agency shall promptly notify PayNearMe of such claim, reasonably cooperate in its defense and allow PayNearMe to control its defense and settlement. Under no circumstances may PayNearMe create an obligation on or acknowledge liability of Agency, however.

9. **Liability and Warranty Disclaimer.** EXCEPT FOR A BREACH OF THE INTELLECTUAL PROPERTY AND CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTIONS 2 AND 6, THE NO LIMITATION OF LIABILITY FOR CHARGEBACKS AND THIRD PARTY FINES AND FEES IN SECTION 7, AND THE INDEMNIFICATION UNDERTAKINGS IN SECTION 8, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS AND DATA), WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, PAYNEARME'S, ITS BANKS', ITS PROCESSING PARTNERS AND ITS PAYMENT LOCATIONS' CUMULATIVE LIABILITY, FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY ADDENDA) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF (I) \$100,000; OR (II) THE AMOUNT OF FEES RECEIVED BY PAYNEARME FOR SERVICES PERFORMED UNDER THIS

AGREEMENT IN THE IMMEDIATELY PRECEDING 12 MONTHS. FOR CLARITY, THE CAP SHALL NOT APPLY TO CUSTOMER FUNDS DUE TO AGENCY BY PAYNEARME FOR PERFORMING ITS SERVICES UNDER THE AGREEMENT. FURTHERMORE, PAYNEARME'S, IT'S BANKS', IT'S PROCESSING PARTNERS', AND ANY PAYMENT LOCATION'S LIABILITY FOR THE FAILURE TO PROCESS ANY TRANSACTION PURSUANT TO THE TERMS OF THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE PAYMENT ACTUALLY MADE BY THE USER, PLUS ATTORNEYS' FEES AND INTEREST.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FROM A COURSE OF PERFORMANCE OR DEALING, TRADE USAGE, OR OF UNINTERRUPTED OPERATION WITHOUT ERROR, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY WARRANTS THE RESULTS OF USE OF ITS OFFERINGS, NETWORK, APPLICATIONS, PLATFORMS OR SERVICES, AND EACH PARTY ASSUMES ALL RISK AND RESPONSIBILITY WITH RESPECT THERETO. EACH PARTY ALSO ACKNOWLEDGES THAT IN COMMUNICATING UNDER THIS AGREEMENT THAT INFORMATION WILL TRAVEL THROUGH SOME THIRD PARTY SYSTEMS (E.G., TELECOMMUNICATIONS NETWORKS) THAT ARE NOT UNDER EITHER PARTY'S REASONABLE CONTROL. NO WARRANTY EXISTS WITH RESPECT TO THE SECURITY OF SUCH THIRD PARTY SYSTEMS.

**10. Termination.**

- a. Termination Rights. In addition to the other specific termination rights described in this Agreement, either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party in the event of a breach of this Agreement not corrected within a reasonable notice period not exceeding thirty (30) days or upon ninety (90) days' prior written notice to the other Party for any or no reason. PayNearMe also reserves the right to terminate the Agreement (i) upon written notice if at any time Agency does not pass PayNearMe's initial or ongoing compliance or credit reviews, (ii) upon thirty (30) days' prior written notice if changes to applicable Rules cause processing or associated pricing to be impractical, (iii) immediately and without notice if Agency causes PayNearMe to be in a status of non-compliance with applicable Rules, or if required by PayNearMe's Bank or Processing Partners, or (iv) immediately and with prompt notice in the event of termination by PayNearMe's Bank or Processing Partners.
- b. Effect of Termination, Generally. In the event of termination of the Agreement, all fees that have been earned prior to the termination and all payments outstanding less applicable charges will be paid as previously provided. Upon termination, the authorizations described in Section 1 will cease and the Parties will return or destroy all Confidential Information of the other within such Party's possession or control and certify same upon request. The rights and obligations of the Parties under Sections 2 through 11 survive any termination of this Agreement.
- c. Effect of Termination on ACH and Card Payments. In the event of termination of the Agreement, Agency (i) expressly authorizes PayNearMe to continue disbursement of funds for all Transactions of Agency in the process of being collected and deposited; and (ii) agrees that PayNearMe will determine the portion of collected funds (if any) that will be placed in the Reserve Account in accordance with Section 3(a)(x). Agency agrees that such funds will be maintained in the Reserve Account for a minimum of ninety (90) days, or until all fees, charges, losses, or amounts for which Agency is liable under this Agreement have been paid, and all contingent liabilities associated with Agency have expired or been resolved. Further, PayNearMe reserves the right to require Agency to deposit in the Reserve Account reasonable additional amounts based upon Agency's processing history and/or anticipated risk of loss to PayNearMe. Any balance of the Reserve Account remaining after Chargeback or Return rights have expired and all other expenses, losses and damages have been paid will be promptly disbursed to Agency. Agency acknowledges that PayNearMe or its Processing Partners are required to report the Agency's business name and the names and identification of its principals to MasterCard's Member Alert To Control High-risk Merchants list and/or Discover Networks' Consortium Agency Negative File list in the event Agency is terminated for the reasons set forth in those organizations' rules. Agency agrees it will hold PayNearMe harmless for all such reporting. Upon termination for any reason (assuming notice thereof has been provided), Agency will immediately cease requesting ACH Entries and Card Authorizations and will cease transmitting Transactions to PayNearMe. In the event Agency obtains any Entry or Authorization after termination, Agency expressly acknowledges and agrees that the fact that any such Entry or Authorization was requested or obtained shall not operate to reinstate this Agreement. All obligations for Transactions prior to termination (including to pay for Chargebacks or Returns and PayNearMe's related expenses) survive termination.

**11. Miscellaneous.**



**CONFIDENTIAL AND PROPRIETARY**

- a. Both Parties expressly deny that any partnership exists between the Parties; nor shall any arise as result of this Agreement, and both Parties expressly agree that neither Party shall be liable for the debts or obligations of the other Party. Each Party further acknowledges and agrees that it has no authority to enter into contracts that bind or create obligations on the part of the other Party without the prior written authorization of the other Party. PayNearMe and Agency shall each have sole responsibility for all acts and omissions of their respective personnel.
- b. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH AGENCY IS LOCATED, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES (THE "HOME STATE"). THE SOLE JURISDICTION AND VENUE FOR ACTIONS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN ANY COURT WITHIN THE HOME STATE CITY NEAREST TO AGENCY'S HEADQUARTERS THAT HAS A FEDERAL COURT VENUE. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and reasonable attorneys' fees and experts' charges.
- c. This Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes in all respects any and all prior agreements, written or oral, with respect to such subject matter. Any term of this Agreement may be amended or waived only with the written consent of the applicable Party. In the event that any provision of this Agreement is declared void or illegal, then the remaining provisions will continue to apply to the extent equitable.
- d. Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement and that the person signing this Agreement on its behalf has been properly authorized to enter into this Agreement. Agency further warrants that provision of the Agency Services is lawful, and PayNearMe further warrants that provision of the Network is lawful. Each Party confirms that it each is, and shall be, in full compliance during the Term of the Agreement with the applicable laws and Rules, including without limitation applicable state and federal privacy laws; each Party shall be solely responsible for conforming its policies and procedures to applicable laws and Rules; and each Party will perform its obligations related to this Agreement in compliance with all applicable laws and Rules.
- e. Notice will be provided to the respective addresses shown below (or other subsequently noticed address) by reliable overnight courier or other mutually agreeable means.
- f. This Agreement is not assignable; except by either Party in connection with a merger or sale of substantially all of its assets or securities and by PayNearMe to any affiliate or to any state or federally chartered bank, if PayNearMe continues to act as an agent of such bank in connection with the performance of this Agreement.
- g. Agency can elect to outsource applicable information processing functions and integration to PayNearMe systems associated with the performance of this Agreement to a qualified integrated/independent software vendor ("ISV") on notice to PayNearMe. Agency will ensure ISV abides by relevant provisions of this Agreement, including Sections 1(b) and 7. Agency can also elect to access the Network through a "Sponsored ISV" (i.e., an ISV with whom PayNearMe and Agency each has a separate contractual relationship) on thirty (30) days' notice to PayNearMe, after which, applicable provisions of Section 3 may be superseded by PayNearMe's separate agreement with Sponsored ISV.

(Signature Block follows)

CONFIDENTIAL AND PROPRIETARY

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date indicated below by their authorized signatories. This Agreement may be signed in multiple counterparts, including by facsimile or digital signature.

12. Signature Block.

PayNearMe MT, Inc.

By (signature):

Name:

Title:

Address:

  
Daniel J. Shader

President

5201 Great America Parkway, Suite  
510, Santa Clara, CA 95054

Effective Date:

Form(s) of Payment: (e.g., Cash, credit, debit,  
Cash, Credit, Debit, ACH) ACH

Settlement Timing: 2 banking days

Agency:

City of Wyoming

By (signature):

Name:

Title:

Address:

Signatory Email:

Signatory Phone:

Home State:

Michigan

Agency Services are  
(describe):

Water Utility and Tax Payments

Agency's ISV is:

BS&A

Personally Identifiable  
Data:

No

Compliance and Risk Transaction Limits

This table represents PayNearMe's standard compliance limits as of the Effective Date. Changes may occur from time to time at the discretion of PayNearMe's Compliance and Risk Department. Any change that lowers the limits set forth below will be communicated to Agency in writing. Requests to increase a limit must be approved by PayNearMe's Compliance and Risk Department in writing.

	Cash	Card	ACH
Limit per transaction	\$1,000	\$15,000	\$15,000
Limit per rolling 24 hours	\$2,900	\$15,000	\$15,000
Limit per rolling 30 days	\$10,000	\$15,000	\$15,000

**SCHEDULE 1 – AUTHORIZED PAYMENT LOCATIONS**

7-Eleven, ACE Cash Express, Casey's General Store, Family Dollar, CVS, and Walmart are the Payment Locations as of the Effective Date at all physical locations as adjusted from time to time, unless provided otherwise below. (See PayNearMe website for maps showing current locations for each Payment Location.)

**Exceptions (not applicable if left blank):**

**By Payment Location:** \_\_\_\_\_  
**By State:** \_\_\_\_\_  
**By Store Location:** \_\_\_\_\_

**SCHEDULE 2 – FEE SCHEDULE**

PayNearMe will pay Agency all payments received through the Network for Agency Services less PayNearMe's basic fee per transaction (the "PayNearMe Basic Fee") as provided below. The PayNearMe Basic Fee for each tender type has been established based upon the Average Payment Amount and expected Monthly Volume. For cash transactions, the PayNearMe Basic Fee includes all fees paid to or retained by authorized Payment Locations.

PayNearMe can elect to adjust the PayNearMe Basic Fee on thirty (30) calendar days' notice to Agency. PayNearMe reserves the right to so adjust the PayNearMe Basic Fee not more frequently than once every other calendar quarter. If Agency objects to any fee adjustment, Agency can elect to terminate this Agreement for convenience within such thirty (30) calendar day notice period.

PayNearMe encourages Agency to absorb all fees. In the event that Agency elects to pass through the PayNearMe Basic Fee to users, Agency will not characterize such additional charge as a fee that PayNearMe requires Agency to impose on users, except to the extent otherwise required by law.

**Chargebacks, Returns, and NSF:** In order to ensure compliance with the Payment Networks and Rules, PayNearMe reserves the right to immediately suspend Transactions pursuant to Section 3(a)(viii) in the event that either Agency's user chargeback rates (measured by the ratio of total chargebacks in a given month to the total number of Card Transactions for that month) or Agency's user ACH unauthorized return rates exceed industry standard percentages. Additionally, in such event and upon re-initiation of processing, PayNearMe reserves the right to charge Agency additional fees for Chargebacks, Returns, or NSFs upon thirty (30) business days' notice to Agency. If Agency objects to any such fees, Agency can elect to terminate this Agreement within such thirty (30) calendar day notice period.



## Fee Schedule

**Water Utility PayNearMe Basic Fee for Transaction Processing**

Cash	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time	\$1.99	Convenience Fee	200	\$135.00

Debit Cards	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	\$2.25	Convenience Fee	1300	\$135.00
	Recurring payment	\$2.25	Convenience Fee	1	\$135.00
Cost for Debit Card Chargeback:		\$20.00			
Durbin Regulated Debit Cards:		60%			

Credit Cards	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	\$2.25	Convenience Fee	800	\$135.00
	Recurring payment	\$2.25	Convenience Fee	1	\$135.00
Cost for Credit Card Chargeback:		\$20.00			

ACH	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	\$0.50	Convenience Fee	150	\$135.00
	Recurring payment	\$0.50	Convenience Fee	1	\$135.00
Cost for Authorized Return:		\$5.00			
Cost for Unauthorized Return:		\$10.00			

**Tax PayNearMe Basic Fee for Transaction Processing**

Cash	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time	\$1.99	Convenience Fee	0	\$2,720.00

Debit Cards	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	2.25%	Convenience Fee	53	\$2,720.00
	Recurring payment	N/A	N/A	0	N/A
Cost for Debit Card Chargeback:		\$20.00			
Durbin Regulated Debit Cards:		60%			

Credit Cards	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	2.25%	Convenience Fee	18	\$2,720.00
	Recurring payment	N/A	N/A	0	N/A
Cost for Credit Card Chargeback:		\$20.00			

ACH	Payment Type	PayNearMe Basic Fee	Fee Type	Transactions per Month	Average Payment Amount
	One-time payment	\$0.50	Convenience Fee	30	\$2,720.00
	Recurring payment	N/A	N/A	0	N/A
Cost for Authorized Return:		\$5.00			
Cost for Unauthorized Return:		\$10.00			

Agency may have the ability to waive the Convenience Fee for its customers. When Agency waives the Convenience Fee, in accordance with Section 3(a)(ix), Agency authorizes PayNearMe to deduct the equivalent amount of all waived PayNearMe Basic Fee Transactions from Agency's Bank Account in the month following the month in which the Transaction took place.

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Other Services / Other Fees

Item	Amount (plus taxes where applicable)	Description	Payment timing
Setup Fee	\$0	One-time fee to facilitate Merchant's integration efforts. Non-refundable.	One time, due 30 days after Effective Date
IVR	\$0	A dynamic interactive voice response service that allows automated payments by phone.	Annually
Engagements Engine	\$0	Automated monthly reminders and other customer communications that are available in addition to the standard reminder or welcome message offered as part of PayNearMe's standard Services.  <i>Fee includes up to 10,000 messages, then \$0.05 per additional message</i>	Annually
Business Rules Engine	\$0	In addition to the one standard business rule offered as part of the PayNearMe standard Services, Merchant may choose from ~10 additional pre-defined business rules to configure the PayNearMe platform to meet their needs.  <i>Fee includes up to 20,000 transactions, then \$0.10 per transaction</i>	Annually

Other Relevant Information

Reserve Account:

Initial required balance	\$0.00
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Monthly Minimum Payment:

Beginning 6 Months from the Effective Date or 3 Months from the Production Ready Date, whichever is sooner	Not applicable
Beginning 12 Months from Production Ready Date	Not applicable
Beginning 24 Months from Production Ready Date	Not applicable

## SCHEDULE 3 – DEFINITIONS

1.1. **“Accountholder”** means a Bank Account Holder, a Cardholder, or both.

1.2. **“ACH”** means the Automated Clearing House paperless entry system operated by the Federal Reserve.

1.3. **“Authorization”** shall mean an affirmative response by or on behalf of a Card Issuer, to a request to the API to affect a Purchase, that a Purchase is within the Cardholder’s available purchasing limit and that the Cardholder has not reported the Card lost or stolen. A Purchase must still be done to capture the Cardholder’s funds.

1.4. **“Bank”** means each Financial Institution acting as an Originating Depository Financial Institution with respect to ACH Entries or the sponsor bank of Card transactions.

1.5. **“Bank Account”** means either (i) a Consumer’s valid bank account at a U.S. bank for the payment of funds; or (ii) Agency’s FDIC-insured US bank demand deposit account for the crediting of collected funds and the debiting of disbursements, fees and charges pursuant to this Agreement. The Bank Account information may be modified from time to time by Agency’s written request, and after approval by PayNearMe.

1.6. **“Bank Account Holder”** means the person who purports to be the person in whose name the Bank Account is held.

1.7. **“Card”** means (i) a valid debit, credit, and/or prepaid debit card in the form issued under license from Visa U.S.A. Inc., Visa International, Inc., MasterCard International Incorporated, or Discover Network; or (ii) any other valid debit and/or prepaid debit card accepted by Agency and facilitated by PayNearMe.

1.8. **“Card Brand”** means Visa, MasterCard, Discover Network, or any other Card Issuers that provide Cards that are accepted by Agency by agreement with PayNearMe.

1.9. **“Cardholder”** means the person who purports to be the person in whose name the Card is issued.

1.10. **“Card Issuer”** means the financial institution or company which has provided a Card to the Cardholder.

1.11. **“Chargeback”** means the procedure by which the value of a Sales Draft (or disputed portion thereof) is returned to the Card holder through the Payment Network.

1.12. **“Credit Voucher”** means a document executed by Agency evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

1.13. **“Data”** means all messages, images, files, data and other information transmitted by a Party in connection with the Agreement.

1.14. **“Disbursement”** shall mean the acceptance of a Card or information embossed on the Card, or Bank Account information for payment to Accountholder by PayNearMe on behalf of the Agency. The Agency obtains the Card or Account number from the customer, invokes a subsequent Settlement, whereby PayNearMe debits the account, and pays the appropriate Payment Network or deposits proceeds in the appropriate Bank Account.

1.15. **“Entry”** means an ACH debit or credit entry issued in Agency’s name.

1.16. **“File”** means the data file or batch release used to transmit one or more Entries to the Bank.

1.17. **“Imprint”** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter; or (ii) the electronic equivalent obtained by swiping a Card through, or inserting a card into, a terminal and electronically printing a Sales Draft.

1.18. **“NSF”** means Non-Sufficient Funds, i.e., when a Bank Account does not have enough money to cover a Transaction.

1.19. **“Payment Confirmation”** means an electronic verification from PayNearMe to Agency via a PayNearMe

certified interface, payment callback, or certified payment report, indicating that payment has been made on the applicable date. Payment Confirmation does not include any other callback, such as a payment authorization callback, nor does it include any transaction reports as generated by the PayNearMe system.

1.20. **“Payment Network(s)”** shall mean VISA USA, Inc., MasterCard International, Inc., Discover Network, a business unit of Discover Financial Services, STAR, NYCE, PULSE, Maestro, AccelExchange, CU24 and other networks as may be added or eliminated from time to time by PayNearMe at their sole discretion.

1.21. **“PayNearMe Basic Fee”** means a fee charged on all transactions that is payable to PayNearMe for processing Agency’s transactions.

1.22. **“Purchase”** means the exchange of goods or services, or credit for such, from Agency to a user, where user makes payment through the use of a Bank Account or Payment Network.

1.23. **“Reserve Account”** means an account for all prefunding obligations and future indebtedness of Agency to PayNearMe, including, but not limited to Chargebacks, Returns, Disbursements, credits, refunds, fines, and fees, in such amount as PayNearMe from time to time may determine in its sole discretion.

1.24. **“Return”** shall mean when a payment is returned by the Bank after a user provides their Bank Account and routing information to make a payment and the payment cannot be processed, often because of an NSF, a stop payment, or incorrect account information.

1.25. **“Reversal”** shall mean the reversing of a completed Transaction.

1.26. **“Rules”** means all rules, regulations, and laws as respectfully amended from time to time of (i) the Card Brands or Payment Networks; (ii) the National Automated Clearing House Association; (iii) any national, federal, state, or local jurisdiction in which Agency operates; and (iv) the Electronic Transaction Association, all to the extent applicable to Agency.

1.27. **“Sales Draft”** means a receipt of acknowledgement provided to the Cardholder subsequent to a Transaction, which is a binding contract between Agency and the Cardholder.

1.28. **“Security Guidelines”** means security standards and guidelines that are applicable to Agency and published from time to time by the Payment Networks, including, without limitation, the Visa U.S.A. Cardholder Information Security Program (CISP), the MasterCard Site Data Protection (SDP), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS (Payment Application Data Security Standards).

1.29. **“Services”** shall mean the processing services, including Disbursements, Purchases, address verification, Reversals, voids, Payment Confirmation, Authorization, Return and Chargeback processing, Settlement, Program setup, periodic reports, and ongoing Program support provided by PayNearMe under this Agreement.

1.30. **“Settlement”** means PayNearMe (i) crediting the Agency’s Bank Account after receiving proceeds for Purchases made via ACH or proceeds for Purchases from the Payment Networks and (ii) debiting the Bank Account and paying the Payment Networks for past Disbursements.

1.31. **“Third Party Sender”** means PayNearMe when PayNearMe is acting as an intermediary between the company originating the ACH payment and the Originating Depository Financial Institution (ODFI) of that transaction.

1.32. **“Transaction”** shall mean a Disbursement or Purchase transaction in connection with a Card or ACH payment.

SCHEDULE 4 – COOPERATION SCHEDULE

PayNearMe & Agency:

Public Relations - Each Party will:

- Support a joint press release, if applicable
- Conduct social media (e.g. Facebook, Twitter, etc...) posts the day of the applicable press release and/or within a month after launching the service. Posts will describe service benefits and/or customer experience

PayNearMe:

Marketing & Communications - PayNearMe will:

- List Agency in relevant marketing materials
- Identify Agency as a valued user of the service in media communications
- Support the announcement(s) within other appropriate user communications (for example, Social Media, etc.)

Agency:

Marketing & Communications - Agency will actively promote and/or sell the PayNearMe service to users. The PayNearMe Marketing Team will provide access to its standard consumer marketing program.

Under such strategy and as applicable, Agency will:

- Send multiple email blasts to its user base announcing the availability of the PayNearMe service as a payment option
- For the first six (6) months after launch, include PayNearMe in Agency's materials for the service sign-up process with all other payment alternatives, including an emphasis that PayNearMe is a "new" option
- Enable staff to maintain a reasonable supply of printed marketing materials, such as flyers, for distribution to their user base

Training - Agency will:

- Encourage user-facing service staff who should be familiar with payment alternatives to participate in a 30-minute pre-launch informational training session about PayNearMe

Crawl, Walk, Run implementation

- Crawl: Merchant to add the QR code to the monthly billing statement
- Walk: Merchant to promote IVR and office payments
- Run: PayNearMe to process all merchant payments via IVR, web, office, QR code on bill

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO  
EXECUTE AN AGREEMENT WITH PROGRESSIVE AE TO ADMINISTER  
THE CONSTRUCTION OF THE 54<sup>th</sup> STREET – CLYDE PARK AVENUE TO US-131  
AND MEIJER ENTRANCE DRIVE PROJECT

WHEREAS:

1. The City of Wyoming is eligible to receive Michigan Department of Transportation (MDOT) funding for capacity improvements on 54<sup>th</sup> Street from Clyde Park Avenue to US-131, including a Meijer access drive.
2. Progressive AE is currently providing design services for this project and construction administration services are also needed.
3. On November 10, 2021, Progressive AE submitted the attached proposal for the construction administration of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$85,600.
4. Funds are available in the Major Street Fund Account No. 202-441-46300-972.502.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby authorizes the Mayor and City Clerk to execute an agreement with Progressive AE for the construction administration of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$85,600.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                     No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Agreement

Resolution No. \_\_\_\_\_



## **STAFF REPORT**

Date: December 13, 2021

Subject: Progressive AE Agreement – 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance Project

From: Jeff Oonk, Senior Civil Engineer

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

Staff recommends City Council authorize the Mayor and Clerk to execute an agreement with Progressive AE for the construction administration of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in 2022 in the amount of \$85,600.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

The project will improve progression of vehicles along the 54<sup>th</sup> Street corridor and reduce delays west of US-131 by Meijer. The improvements will reduce pollution and vehicular delay and will improve safety and access to local businesses.

### **DISCUSSION:**

In the current Grand Rapids area Transportation Improvement Plan (TIP), the City of Wyoming was awarded funding to improve capacity of 54<sup>th</sup> Street, west of US-131. Improvements include relocating access to Meijer, extending turn lanes, adding capacity for MDOT's southbound off ramp and other related improvements. The project involved a complicated design process to satisfy the requirements of MDOT, FHWA, Meijer and other businesses. Progressive AE is currently performing design services which will be complete when the project is bid through MDOT in the spring of 2022. Once the project is bid, construction administration services will be required. These services include construction oversight, documentation, preparation of contractor payments and other items in accordance with MDOT's requirements. Progressive AE as the design firm is very familiar with the project and is best suited to perform construction administration. On November 10, 2021, Progressive AE submitted a proposal to administer the construction of the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$85,600.

### **BUDGET IMPACT:**

Sufficient funds are available in the Major Street Fund Account No. 202-441-46300-972.502.

CITY OF  
**Wyoming**  
MICHIGAN

**PROFESSIONAL SERVICES CONTRACT**

CITY OF WYOMING, MICHIGAN  
(OVER \$8,500)

This Contract is made as of the Effective Date between City and Professional.

City means the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, PO Box 905, Wyoming, MI 49509-0905.

Professional means:

Progressive AE  
[Name of contracting entity]  
A Michigan corporation  
[State and type of entity, e.g., corporation, limited liability company, etc.]  
1811 4 Mile Road NE  
[Professional's street address]  
Grand Rapids, MI 49525  
[Professional's city, state & zip]

Professional's personnel means Professional's directors, members, partners, officers, employees, contractors, consultants, agents and representatives and any other individuals or entities Professional engages to provide services under the Contract.

Deliverables means the work products of Professional's services as detailed in the Proposal, such as plans, specifications, bid documents, estimates, reports, opinions, recommendations, pleadings, and legal documents, real estate documents, etc.

Effective Date means: November 10, 2021.

Goods means any parts, equipment, supplies, materials, or other items or services the City is acquiring from Professional as itemized or stated in the Proposal.

Proposal means Professional's proposal attached as Exhibit B.

Services means the services described and specified in the Proposal.

Standard Terms means the attached 2-page Exhibit A entitled "City Contract Standard Terms and Conditions."

**TERMS AND CONDITIONS**

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Professional will perform the Services and provide the deliverables as detailed in the Proposal.
2. City will pay the Professional in accordance with the Proposal.
3. Professional represents and warrants, except for those specifically waived or modified in this paragraph, Professional is complying with and will comply with the Standard Terms. Waived or modified conditions are as follows:

None.

[Identify those the City Attorney has agreed may be waived or the City attorney approved modifications or write "None"]

4. This is the only agreement between the parties regarding City's engagement of Professional to perform the Services. There are no other agreements, representations, or warranties except as stated in the Proposal. This contract can be amended only in writing signed by both City and Professional.

City and Professional have signed this Contract as of the Effective Date.

CITY OF WYOMING

By: Jack A. Poll, Mayor

By: Kelli A. Vandenberg, City Clerk

Date signed:                     , 20          

Approved as to form:

Scott G. Smith, City Attorney

Progressive AE

Digitally signed by William Walter  
Culhane, DN: cn=William Walter Culhane, o=Progressive AE, email=wc@progressiveae.com, c=US  
By: William W. Culhane  
[Signature officer, director or principal of Professional]  
Principal

[Typed/Printed Name & Title of Person Signing for Professional]

Date signed: 12/09, 2021



**EXHIBIT A**

**CITY CONTRACT STANDARD TERMS AND CONDITIONS**

1. Applicability. These Standard Terms and Conditions apply to the Contract unless expressly modified in writing signed by the Mayor and City Clerk or the City Manager.

2. Legal Compliance. Professional will comply with applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of governmental agencies, officials, or courts.

3. Grant Compliance. Professional represents and promises that, if state or federal grant funds are identified as a source of payment for any part of the project, Professional has reviewed and will comply with all applicable grant agreement terms and conditions.

5. Qualifications. Professional represents and promises that:

A. Professional has and will maintain, and Professional's personnel have and will maintain, any needed licenses, registrations, certifications, memberships, or other approvals needed to perform the Services in Michigan.

B. Neither Professional nor any of Professional's personnel: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding this Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract with a government agency; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently criminally charged with committing any of the offenses enumerated in this certification; and (iv) have within 3-years preceding this Contract had one or more public transactions terminated for cause or default..

C. If the Contract is for a community development block grant, U.S. Department of Housing and Urban Development (HUD), federal and/or state funded project, Professional and Professional's personnel are not listed on HUD's list of debarred and suspended participants.

D. The successful bidder, its subcontractors and their respective personnel must register in the federal System for Award Management (SAM) list and be in good standing (i.e., not suspended or debarred from receiving federal funds).

E. Neither Professional nor Professional's personnel is an "Iran linked business" under Michigan's Iran Economic Sanctions Act.

6. Nondiscrimination and Respect. City is committed to equity, fairness, impartiality, courtesy, respect and nondiscrimination in all programs, benefits, and actions, including in its contracts and any activities that Professional, Professional's personnel, contractors engage in for or on behalf of City. Accordingly:

A. Professional and Professional's personnel in (i) employment actions, (ii) solicitation, bidding or contracts with subcontractors or consultants, or (iii) solicitation, bidding or contracts for materials, will not discriminate based on race, color, religion, national origin, age, sex, height, weight, marital status, familial status, mental or physical disability, genetic information, or any other reason prohibited by law that is unrelated to the employee's or applicant's ability to perform the duties of a job or position. For purposes of this section, "sex" means sex and gender, sex or gender stereotypes, sexual orientation, gender

identity (including transgender status) or expression, and pregnancy, childbirth or conditions related to pregnancy or childbirth. Professional and Professional's personnel will comply with applicable state and federal laws, rules, regulations, orders, and other requirements regarding discrimination and inclusion, including, for example, Title VI of the federal Civil Rights Act of 1964, Michigan's Elliott-Larsen Civil Rights Act, Michigan's Persons with Disabilities Civil Rights Act, the federal Age Discrimination Act of 1975, and §504 of the federal Rehabilitation Act of 1973, together with rules, regulations, orders, directives and guidance issued pursuant to those statutes.

1. Professional will, in solicitations or advertisements for employees placed by or on behalf of Professional, state that all qualified applicants will be considered for employment without regard to race, color, religion, height, weight, marital status, sex, age, national origin, or disability unrelated to a person's ability to perform the duties of a particular job or position.

2. Professional will send to each labor union or representative of workers with which Professional has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Professional's commitments under this section and will post copies of that notice in conspicuous places available to employees and applicants for employment under this Contract.

B. If Professional or Professional's personnel will, as part of its Services, be engaging for or on behalf of City with others, Professional will ensure that engagement (i) treats all individuals with fairness, equity, impartiality, courtesy and respect, and in a manner that does not discriminate based on race, color, religion, national origin, age, sex, height, weight, marital status, familial status, mental or physical disability, genetic information, or any other reason prohibited by law, and (ii) if that engagement includes communications with individuals with limited English proficiency (i.e., those who speak English less than very well), it will use language assistance services for oral and written communications. Language assistance services in accordance with City's Limited English Proficiency Plan (part of City's Nondiscrimination Plan at <https://www.wyomingmi.gov>) will comply with this requirement.

C. Noncompliance with this section is a material breach of this Contract that can result in (i) withholding payments to Professional until Professional complies, (ii) Contract cancellation, termination, or suspension, in whole or in part, and/or (iii) Professional's ineligibility to bid on or enter future contracts with City.

D. Professional will retain and, upon City's request, provide copies of all information and reports required by all laws, rules, regulations, orders, directives and guidance referred to in this section as determined by City or a state or federal agency to be pertinent to ascertain Professional's compliance. If requested information is exclusively possessed by another who fails or refuses to furnish it, Professional will so certify to City.

E. Professional must include the requirements of paragraphs A through D in all subcontracts, consultant contracts, and material procurement and equipment leasing documents, directly or indirectly related to this Contract, and any other Professional activities that HUD or the United States Department of Justice determine are needed to comply with this section. Professional must take such action with respect to any subcontractor,



consultant, material supplier, or equipment lessor as City deems reasonably necessary to enforce compliance with this section including sanctions for noncompliance.

7. Ethical Standards. Professional and Professional's personnel have not engaged in and will refrain from: (i) holding or acquiring an interest conflicting with this Contract; (ii) engaging in any act creating an appearance of impropriety with respect to the award or performance of this Contract; (iii) attempting or appearing to influence a City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than Professional's personnel, any consideration contingent upon the award of this Contract. None of Professional's personnel is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or other City officer or City board/commission member of the City except as already disclosed in writing to City. Professional will promptly inform City of any change in this circumstance.

8. Media Releases. Media releases (including promotional literature and commercial ads) pertaining to this Contract or the project to which it relates must not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. W-9. Before beginning work Professional will e-mail to [accountspayable@wyomingmi.gov](mailto:accountspayable@wyomingmi.gov) a completed an IRS W-9 form.

10. Document Ownership and Use. All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to City upon City's payment of any amounts due Professional under the City Contract. City will hold Professional harmless from and indemnify Professional for any liability resulting from the use of those documents for a purpose or project beyond the purposes and projects for which they were provided to City.

11. Intellectual Property. Professional guarantees the sale or use of software, copies, records, or other intellectual property provided or used to perform the Services and all deliverables will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to City, defend all actions against City or City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as in conjunction with this Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. City is generally exempt from federal and state taxes and a copy of supporting documents can be requested by contacting City's Finance Department.

13. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

14. Risk Allocation. Professional is solely responsible for (i) means and methods of the Services, (ii) the conduct of Professional's personnel, and (iii) injuries or property damage occurring as a result of the Services. Professional will hold City and City's officers and employees harmless from, indemnify them for, and defend them (with legal counsel reasonably acceptable to City) against all claims made by persons other than City as a result of the Services. Professional will reimburse City for or pay in City's stead costs City may incur as a result of claims, demands, judgments, administrative actions, or any order to pay any amounts made or entered against City or City's officers or employees as a result of the Services.

15. Insurance. Professional must obtain and maintain the following insurance:

COMMERCIAL GENERAL LIABILITY
Minimal Limits: \$1,000,000 Each Occurrence, \$1,000,000 Personal & Advertising Injury, \$2,000,000 General Aggregate, and \$2,000,000 Products/Completed Operations Coverage must include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Professionals; (D) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.
AUTOMOBILE LIABILITY INSURANCE
Minimal Limits (hired and non-owned automobile coverage): \$1,000,000 per person      \$1,000,000 per occurrence
WORKERS' DISABILITY COMPENSATION
Minimal Limits: \$500,000 per occurrence Coverage shall be in accordance with Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.
EXCESS/UMBRELLA INSURANCE
Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).
PROFESSIONAL LIABILITY INSURANCE
Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.
ADDITIONAL INSURED
If this Contract is for more than \$5,000, General Commercial Liability, Automobile Liability and Excess/Umbrella Liability insurance shall include an endorsement stating the following are Additional Insureds: City and City's officers, employees, volunteers, agents, boards, and commissions. Coverage is to be primary and any City insurance will be secondary and/or excess.

Upon City request, Professional will provide to City's Purchasing Department copies of certificates of insurance, policies and endorsements.

16. Records. City must retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to this Contract and the Services for at least 7 years after completion of this Contract. Professional will, upon City's request, allow inspection, auditing, and copying of all retained records.

17. Assignment/Beneficiaries. Unless this Contract states otherwise, (i) none of Professional's rights or duties may be assigned or delegated without City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of this Contract.

18. Independent Contractor. Professional is wholly independent of City. None of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for acts, omissions, and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for the Services. City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.

## EXHIBIT B





November 10, 2021

Mr. Russ Henckel  
City of Wyoming  
2660 Burlingame Avenue, SW  
Grand Rapids, MI 49509

Re: Proposal for Professional Engineering Services for Construction Services  
54th Street – Clyde Park to US-131 and Meijer Entrance Drive

Dear Mr. Henckel,

Progressive AE is pleased to present this proposal for construction engineering services for 54th Street – Clyde Park to US-131 and Meijer Entrance Drive. Following is our understanding of the project, our scope of services, proposed schedule, and compensation for your consideration.

#### **UNDERSTANDING OF PROJECT**

This project is the second phase of improvements to 54th Street from Division Avenue to Clyde Park to improve capacity and levels of service through the corridor. The first phase was completed by the City in 2019 / 2020 from Division to US-131. The second phase is planned to be completed in 2022 from US-131 to Clyde Park.

We understand that the City of Wyoming would like to continue partnering with Progressive AE for professional services during the 2022 construction season to implement this project following successful letting and award of this project in early Spring through MDOT LAP. This proposal is submitted to describe the scope, schedule, and compensation for construction services of 54th Street improvements from Clyde Park to US-131 and Meijer Entrance Drive.

#### **SCOPE OF BASIC SERVICES**

Based upon the above project understanding, Progressive AE will provide the following scope of services:

- A. Design (Phase 1) to be complete upon Letting of Project in Spring of 2022.
- B. Construction Services – Phase 2
  - 1. Administration
    - a. Coordination of the pre-construction meeting.
    - b. Project management with City of Wyoming assigned Senior Inspector for the project. (Senior Inspector by City to answer questions, provide guidance on City preferences, etc.) and coordination with selected contractor.
    - c. Review of shop drawings.
    - d. Payment application review.
    - e. Field Observation and Office Technician Services.
    - f. Construction progress meetings.
    - g. Design modifications and change order management.
  - 2. Field Services
    - a. Construction observation and field guidance, on both a full time or part-time basis depending on work being achieved, to ensure that the work is being performed according to the construction documents to meet Federal requirements.
    - b. Material Testing Consultants (under contract with City of Wyoming for testing services).
    - c. Meyers, Bueche & Nies, Inc. (under contract with City of Wyoming for surveying services and staking).
    - d. Project closeout and as-builts drawings.

## SCHEDULE

Progressive AE will begin work on the construction services scope of this project upon receiving an authorized purchase order, and upon completion of MDOT Letting of this project in April or May of 2022. We anticipate that construction will take approximately 16 weeks overall with 8 weeks being full time and 8 weeks being part time observation within the range of May 2, 2022 to October 31, 2022 but not be continuous during that timeframe.

- Start of Construction Activities May 2, 2022
- Completion of Construction Activities October 31, 2022

## CLARIFICATIONS

Progressive AE will coordinate with the City of Wyoming, Material Testing Consultants, and Meyers, Bueche & Nies, Inc. to achieve the project. Progressive AE does not control any of these partners or the decisions they make or how they may affect the project.

## PROFESSIONAL COMPENSATION

Progressive AE proposes to provide the services outlined herein for Construction Services for on an hourly basis towards an estimated sum of \$85,600 (eighty-five thousand six hundred dollars) which includes expenses estimated at \$1,300 (one thousand three hundred dollars) outlined in the attached Schedule of Invoice Rates.

Progressive AE has prepared this proposal for City of Wyoming and we request that it be treated as confidential and not copied or distributed for any reason other than evaluation for hire.

The terms of this proposal defining project understanding, scope, schedule, clarifications, and professional compensation are incorporated into the Standard Agreement Provisions for Professional Services which are attached. The terms and conditions as identified in the Standard Agreement Provisions will be valid unless superseded by an AIA Standard Form of Agreement. If this proposal meets with your approval, please sign below and return a copy of the signed proposal. Your signature will be our authorization to begin the work and place the project in the firm's schedule. If you do not sign and return this proposal, and after receipt of this proposal you request or accept services from Progressive AE in connection with this or any other engagement, your request or acceptance of such services will be deemed to be an acquiescence or agreement with the terms provided in this proposal.

We look forward to working on this project with you, please contact us with any questions.

Sincerely,



Daniel W. Westenburg  
Senior Civil Engineer



Timothy M. Bradshaw  
Practice Leader

Practice Leader

Accepted By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**City of Wyoming**

DWW/rmf  
P:\71740012\WIP DOCUMENTS\Contract\Construction Services proposal\2021 11 10 Wyoming 54th Street Construction  
Administration and Observation Proposal.docx



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**Standard Agreement Provisions**  
**Architectural Services**

The parties to this agreement, Progressive AE, Grand Rapids, Michigan, USA, hereinafter called the ARCHITECT and City of Wyoming, Grand Rapids, Michigan, USA, hereinafter called the OWNER, hereby agree to the following conditions:

1. Limit of Scope: The services provided by the ARCHITECT shall be limited to those described in the proposal dated November 10, 2021. The parties agree that the terms of the proposal are incorporated herein by reference, and are part of this agreement as if fully set forth herein. If any terms set forth in the proposal are expressly in conflict with the terms hereof, the terms of the proposal shall govern.
2. Changed Conditions: If, during the term of this Agreement, the ARCHITECT becomes aware of any circumstances or conditions that were not originally contemplated by or known to the ARCHITECT, then to the extent that they affect the scope of services, compensations, schedule, allocation of risks or other material terms of this Agreement, the ARCHITECT may call for re-negotiation of appropriate portions of the Agreement. The ARCHITECT shall notify the OWNER of the changed conditions necessitating re-negotiation, and the ARCHITECT and the OWNER shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
3. Delays: The OWNER agrees that the ARCHITECT is not responsible for any damages arising directly or indirectly from any delays for causes beyond the ARCHITECT's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, epidemics, pandemics or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substance or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the ARCHITECT to perform its services in an orderly and efficient manner, the ARCHITECT shall be entitled to a reasonable adjustment in schedule and compensation.

4. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such additional services in writing. Special services will be billed monthly as work progresses and invoices are due upon receipt. If services covered by this agreement have not been completed within twelve months of the date of this agreement, through no fault of the ARCHITECT, extension of the ARCHITECT'S services beyond that time shall be compensated as additional services.
5. Standard of Care: Professional Services provided by the ARCHITECT will be conducted in a manner consistent with that level of care ordinarily and normally exercised by licensed architects and engineers practicing in the State of Michigan. The OWNER and ARCHITECT agree that a contingency in the amount of three percent (3%) of the cost of the work be established, as required, for changes that may be required because of possible omissions, ambiguities, or inconsistencies in plans and specifications.
6. Hazardous Materials: The ARCHITECT shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
7. Condominium Conversion: If the ARCHITECT's services and Construction Documents are intended for the design and construction of residential rental units, they shall be under the ownership and control of a single, integrated OWNER. In the event the Project is changed to



any other purpose or use, including, but not limited to, subdivision into individual units for sale, the ARCHITECT shall have no responsibility, and shall be released from all obligations and liabilities for the Project, and each and every right, license and/or ownership interest of the OWNER of the Construction Documents shall be void. The OWNER shall be expressly prohibited from making any further use of the Construction Documents for any purpose, including, but not limited to, the conversion of the Project to another purpose. Further, the OWNER agrees, to the fullest extent permitted by law, to indemnify, immediately defend, and hold harmless the ARCHITECT, its officers, directors, employees and subconsultants (collectively, ARCHITECT) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the services performed under this Agreement.

8. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the ARCHITECT has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the ARCHITECT's opinions of probable construction costs are made on the basis of the ARCHITECT's professional judgment and experience. The ARCHITECT makes no warranty, express or implied that the bids or the negotiated cost of the Work will not vary from the ARCHITECT's opinion of probable construction cost.
9. Schedule for Rendering Services: The ARCHITECT shall prepare and submit for OWNER approval a schedule for the performance of the ARCHITECT's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the ARCHITECT's reasonable control.
10. Ownership of Reports, Drawings and Other Materials: The OWNER agrees that all reports, drawings, letters, work sheets, plans, preliminary material tables, supportive data, documents and other materials produced by the ARCHITECT in the course of and for the purpose of meeting this contract are the property of the ARCHITECT, shall remain in the possession of the ARCHITECT and the ARCHITECT has and retains all copyrights in such material. Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instrument of Service solely for the purposes of constructing, using and maintaining the Project provided that the Owner shall comply with all obligations including the prompt payment of all sums when due, under this Agreement.
11. Alteration and Reuse of CAD Information: Because computer aided design/drafting (CAD) information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, the ARCHITECT reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the ARCHITECT in CAD form. Release of electronic media will be by execution of the Architect's Release of Electronic Media Request Form. Copies shall be for information and used by the OWNER for the specific purpose for which the ARCHITECT was engaged. Said material shall not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the ARCHITECT's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the ARCHITECT harmless, from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the unauthorized use or modification of all Project documentation.



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**Standard Agreement Provisions**  
**Architectural Services**

12. Payment Terms: Invoices will be submitted by the ARCHITECT monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the date of invoice. Invoices past due shall accrue interest at one percent (1%) per month from the original invoice date. If past due invoices cause the ARCHITECT to proceed with legal action or collection services, the OWNER agrees to pay all of the ARCHITECT's collection expenses including reasonable attorney fees.
13. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the ARCHITECT in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one percent (1%) per month shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the ARCHITECT's favor and shall be calculated on the unpaid balance from the due date of the invoice.
14. Abandonment of Work: If any work is abandoned or suspended, the ARCHITECT shall be paid for services performed prior to receipt of written notice from the OWNER of abandonment or suspension.
15. Professional Liability Insurance and Limitation of Liability: The ARCHITECT maintains professional liability insurance as part of its normal business practice. The OWNER agrees to limit the ARCHITECT's liability to the OWNER and to all Construction Contractors and Subcontractors on the project due to the ARCHITECT's negligent acts, errors, or omissions, such that the total aggregate liability of the ARCHITECT to all those named shall not exceed the amount of the ARCHITECT's compensation for the Project.
16. Indemnification: Subject to the limitation in paragraph 15 above, the ARCHITECT agrees to the fullest extent permitted by law, to indemnify and hold harmless the OWNER against damages, liabilities and costs arising from the negligent acts of the ARCHITECT in the performance of professional services under this Agreement, to the extent that the ARCHITECT is responsible for such damages, liabilities and costs. The ARCHITECT shall not be obligated to indemnify the OWNER for the OWNER's own negligence.
17. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ARCHITECT, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of incidental, indirect and consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the ARCHITECT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
18. Dispute Resolution: In an effort to resolve any conflict, the duly authorized representatives of each party will meet together in good faith in an attempt to resolve the conflict. If this attempted resolution fails to resolve the claim or dispute, the parties agree that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for non-binding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. The parties hereto agree to fully



cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration.

If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law.

The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute, or other matter but in no event later than 3 years after the date of substantial completion of the project. If the demand for arbitration is not effectuated within such times, the claim, dispute, or other matter shall be forever barred.

The decision rendered by the arbitrators shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings an arbitration action or lawsuit against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

19. Hiring of Personnel: OWNER may not directly hire any employee of the ARCHITECT. OWNER agrees that it shall not, directly or indirectly solicit any employee of the ARCHITECT from accepting employment with OWNER, affiliate companies, or competitors of ARCHITECT.
20. Site Signage: The ARCHITECT shall be permitted to install on the project premises an exterior sign of not more than 60 square feet for promotional purposes. The location of the sign shall be mutually agreed upon by OWNER and ARCHITECT, not to be unreasonably withheld by either.
21. Means and Methods: The ARCHITECT shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, nor shall the ARCHITECT be responsible for the constructors failure to perform work in accordance with the contract documents.
22. Evaluation of Work: The ARCHITECT shall have authority to reject work that does not conform to the contract documents, however, the ARCHITECT does not have authority to stop work at any time.
23. Buried Utilities: The OWNER will be responsible for furnishing the ARCHITECT information identifying the type of all underground utilities and verifying their specific locations. The ARCHITECT (or their subconsultant) will rely on this information and prepare a plan that shows the locations intended for connections with respect to assumed locations of underground utilities provided by the OWNER. The OWNER will approve of all locations of subsurface penetrations prior to them being made. The OWNER agrees to waive all claims and causes of action against the ARCHITECT for damages to underground improvements. The OWNER further agrees to indemnify and hold the ARCHITECT harmless from any damage, liability or

cost, including reasonable attorney's fees and defense costs for any property damage, injury or economic loss arising or allegedly arising from subsurface penetrations.

24. ADA Requirements: The ARCHITECT shall make a reasonable professional effort to interpret applicable ADA requirements as they apply to this project but cannot warrant or guaranty compliance due to the fact it is civil rights legislation and open to many different interpretations.





## Schedule of Invoice Rates - 2021

### Hourly Staff Charges

Class 9 Personnel:	Principals	\$225/hour
Class 8 Personnel:	Principals and Senior Project Managers	\$190/hour
Class 7 Personnel:	Senior Project Managers, Architects, Engineers, Landscape Architects, Senior Interior Designers, Environmental Analysts and Construction Administrators	\$165/hour
Class 6 Personnel:	Senior Project Managers, Architects, Engineers, Landscape Architects, Senior Interior Designers, Environmental Analysts and Construction Administrators	\$145/hour
Class 5 Personnel:	Project Managers, Architects, Engineers, Landscape Architects, Environmental Analysts, Construction Administrators, Designers, Interior Designers and Surveyors	\$130/hour
Class 4 Personnel:	Project Managers, Intermediate Architects, Engineers, Designers, Interior Designers, Landscape Architects, Environmental Analysts, Construction Administrators and Surveyors	\$115/hour
Class 3 Personnel:	Graduate Architects, Engineers, Designers, Interior Designers, Environmental Analysts, Construction Administrators, Technicians, Project Assistants and Surveyors	\$100/hour
Class 2 Personnel:	Technicians, Interior Designers, Project Assistants, Graduate Architects and Surveyors	\$85/hour
Class 1 Personnel:	Project Assistants and Technicians	\$70/hour

### Reimbursable Expenses

1. Fees for Program, Financial or Procurement Management services when the Owner has engaged a supplier and Architect is subject to a fee.
2. Building permit fees and plan review fees as required by the authorities having jurisdiction over projects at cost plus 10%.
3. Outside services, consultants, travel and lodging at cost plus 10%.
4. Copies, telephone, cell phone voice and data charges and office supplies will be charged through a \$25 per month Misc. Office Expense charge. This charge will not be applied to invoices under \$1,000.
5. CAD black/white plotting at 15¢ per square foot; CAD color plotting at 25¢ per square foot; CAD low density color images at 30¢ each; CAD high density color images at 50¢ each; large-format color plotting at \$9 per square foot. Postage, shipping, and lab tests at cost. Files written to CD will be minimum \$100 per drawing or \$500 maximum. Passenger vehicle mileage on projects at the IRS Standard Rate (currently 56¢ per mile). Lodging, meals, and airfare at cost. Machine rental GPS at \$250 per day. Traffic Counters at \$60 per count. Surveying supplies at 50¢ per stake.
6. Overtime expenses requiring higher than normal rates if authorized by owner.

#### Notes:

1. Invoices are due upon receipt. Unpaid invoices shall bear interest at a rate of 1 percent per month if not paid within 30 days of the date of the invoice.
2. Special media requests may be at higher rate.
3. Hourly staff charges and expenses subject to change annually.

STD RATE

January 19, 2021



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK  
TO AMEND AN EXISTING AGREEMENT WITH PROGRESSIVE AE TO MODIFY THE  
SCOPE OF WORK FOR THE DESIGN OF THE 54<sup>th</sup> STREET – CLYDE PARK AVENUE  
TO US-131 AND MEIJER ENTRANCE DRIVE PROJECT

WHEREAS:

1. The City of Wyoming is eligible to receive Michigan Department of Transportation (MDOT) funding for capacity improvements on 54<sup>th</sup> Street from Clyde Park Avenue to US-131, including a Meijer access drive.
2. Progressive AE is currently providing design services for this project and additional design services are also needed.
3. On November 5, 2021, Progressive AE submitted the attached proposal for the additional design services for the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$32,600.
4. Funds are available in the Major Street Fund Account No. 202-441-46300-972.502.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby authorizes the Mayor and City Clerk to execute an amended agreement with Progressive AE for the additional design services for the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$32,600.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                     No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Agreement

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: December 13, 2021

Subject: Progressive AE Amended Design Agreement – 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project

From: Jeff Oonk, Senior Civil Engineer

Meeting Date: December 20, 2021

---

### **RECOMMENDATION:**

Staff recommends City Council authorize the Mayor and Clerk to execute an amended agreement with Progressive AE for additional design services for the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in 2022 in the amount of \$32,600.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

The project will improve progression of vehicles along the 54<sup>th</sup> Street corridor and reduce delays west of US-131 by Meijer. The improvements will reduce pollution and vehicular delay and will improve safety and access to local businesses.

### **DISCUSSION:**

In the current Grand Rapids area Transportation Improvement Plan (TIP), the City of Wyoming was awarded funding to improve capacity of 54<sup>th</sup> Street, west of US-131. Improvements include relocating access to Meijer, extending turn lanes, adding capacity for MDOT's southbound off ramp and other related improvements. The project involves a complicated design process to satisfy the requirements of MDOT, FHWA, Meijer and other businesses. Progressive AE is currently performing design services under an agreement dated July 1, 2019. Progressive AE has been asked to perform additional design services beyond the scope of the July 1, 2019 agreement. These additional services include revising design documents to comply with MDOT's revised (2020) construction specifications, additional coordination with FHWA and local businesses, and additional design to extend a third eastbound lane on 54<sup>th</sup> Street to Clyde Park. On November 5, 2021, Progressive AE submitted a proposal for additional design services for the 54<sup>th</sup> Street – Clyde Park Avenue to US-131 and Meijer Entrance project in the amount of \$32,600.

### **BUDGET IMPACT:**

Sufficient funds are available in the Major Street Fund Account No. 202-441-46300-972.502.

CITY OF  
**Wyoming**  
MICHIGAN

**AMENDMENT TO  
STANDARD CITY PROFESSIONAL SERVICES CONTRACT  
CITY OF WYOMING, MICHIGAN**

This Amendment to Standard Professional Services Contract is made as of the Effective Date between the City and the Professional to amend the Contract to provide for the Additional Services.

"Additional Services" means professional transportation design services related to road work being proposed along 54<sup>th</sup> Street in the City as detailed in the Proposal.

"City" means the City of Wyoming, a Michigan municipal corporation, 1155 28<sup>th</sup> Street SW, Wyoming, MI 49509.

"Contract" means the Standard Professional Services Contract between the City and the Professional with an effective date of May 7, 2019.

"Effective Date" means: December 7, 2021.

"Professional" means Progressive AE, a Michigan corporation, 1811 4 Mile Road NE, Grand Rapids, MI 49525.

"Proposal" means the Professional's proposal for the Change in Service Request attached as Exhibit A.

**TERMS AND CONDITIONS**

In exchange for the consideration in and referred by this Amendment, the parties agree:

1. The Professional will perform the Additional Services as detailed in the Proposal. Except as otherwise provided in the Proposal, the Professional will provide all qualified personnel, supplies and tools needed to perform the Additional Services as described in the Proposal.
2. The City will pay the Professional in accordance with the Proposal. The City will, on a timely basis, provide any information and services the Proposal identifies as being provided by the City, so the Professional can perform the Additional Services as described by the Proposal.
3. Except as modified in the Proposal or this Amendment, all terms and conditions of the Contract shall remain in effect.

The City and Professional have signed this Amendment as of the Effective Date.

**CITY OF WYOMING**

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. Vandenberg, City Clerk

Date signed: \_\_\_\_\_, 2021

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney

**PROGRESSIVE AE**

By: \_\_\_\_\_

Date signed: 12/09, 2021

Digitally signed by William Walter  
Cuthane, CN=C,  
O=Progressive AE, OU=Progressive AE,  
email=wcuthane@progressiveae.com,  
c=US, o=William Walter Cuthane  
Reason: I have reviewed this  
document.  
Date: 2021.12.09 14:42:49-05'00'

EXHIBIT A  
PROPOSAL



# Change in Service Request



**Project Name:** 54<sup>th</sup> Street – Transportation Engineering Services

**Project Number:** 71740012

**TO:**

<b>Name:</b>	Mr. Russ Henckel, City of Wyoming Engineer
<b>Address:</b>	City of Wyoming 2660 Burlingame Avenue SW Grand Rapids, MI 49509
<b>FAX No:</b>	

**CHANGES IN SCOPE from Approved Contract Amount:**

1. Changes to contract documents from 2012 to 2020 MDOT construction specifications, affecting pay items, special provisions, and cost estimate
2. Additional FHWA Coordination
3. Chick-Fil-A / Meijer / Chili's Coordination, Easements & Design  
Items #1 – #3 above, totalling \$22,600 and 156 hours.
4. Additional design to include third EB lane on 54<sup>th</sup> street from Clyde Park (includes traffic signal modification plans, update to MOT, and design through to letting) \$10,000

**IMPACT TO SCHEDULE:**

Having received the Environmental Clearance for this project, we are targeting a letting schedule for April 2022, pending GI meeting completion on 11/30/2021, and FHWA official approval of the break in limited access right of way. The design of the third EB lane and signal modifications at Clyde Park are intended to be included in the scope of this project for letting in April, 2022, if authorized. Current estimate of construction costs to complete this additional scope of work related to third EB lane & signal modifications is \$53,382, and when added to the overall project construction budget, is able to be completed within the Total Job Cost as indicated on Currently Approved S/TIP.

**FEE INCREASE:**

Proposed Fee Increase .....	\$	\$32,600.00
Current Approved Contract Amount .....	\$	\$98,200.00
Proposed Revised Contract Amount .....	\$	\$130,800.00

If you agree to the above proposed scope change, please sign below and return this form via email or FAX to:

<b>Progressive Project Manager:</b>	Christopher Zull -
<b>FAX No:</b>	616/361-1493
<b>Email:</b>	<a href="mailto:zullc@progressiveae.com">zullc@progressiveae.com</a>

Upon receipt of signature, we will proceed with the agreed-upon professional services.

Thank you.

**AGREED TO BY:**

**CLIENT**

**PROGRESSIVE AE**

(Signature)

(Signature)

(Printed Name and Title)

(Printed Name and Title)

(Date)

(Date)

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A PROPOSAL FROM PROCARE TREE SERVICE LLC (CHOP)  
FOR TREE TRIMMING AND REMOVAL SERVICES AND TO AUTHORIZE THE MAYOR  
AND CITY CLERK TO EXCUTE THE CONTRACT

WHEREAS:

1. It is recommended the City Council accept the proposal from ProCare Tree Service LLC for Tree Trimming and Removal for calendar years 2022, 2023, and 2024.
2. It is estimated \$50,000 will be spent annually on tree trimming and removal.
3. Funds for the project are available in the Solid Waste Fund Account 230-441-44300-956.000.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept the proposal from ProCare Tree Service LLC for Tree Trimming and Removal for calendar years 2022, 2023, and 2024 in the total estimated amount of \$50,000 annually.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the contract.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried      Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Proposal  
Contract

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: November 16, 2021

Subject: Acceptance of Proposal – Tree Trimming and Removal (2022 – 2024)

From: Jodie Theis, Public Services Supervisor

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

The Public Works Department recommends that the City Council accepts the proposal from Procure Tree Service LLC (d.b.a. CHOP) for Tree Trimming and Removal for calendar years 2022, 2023, and 2024 at the unit costs shown in the attached proposal. It is also recommended that the City Council authorize the Mayor and City Clerk to execute the contract.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

By maintaining the trees in the parkways and medians the City is able to reduce the amount of dead, dying, damaged and diseased trees within the City. Tree trimming also decreases the risk of tree damage liabilities and assists in sustaining public and private property values.

### **DISCUSSION:**

Invitations to bid on Tree Trimming and Removal were sent to twenty-one bidders and bid specifications were picked up by two pre-qualified bidders. On November 16, 2021, the City did not receive any bids.

Therefore, because no bids were received, the City reached out to its current tree trimming and removal contractor, CHOP, and asked them to submit a proposal to perform the work. The proposal was received on November 16, 2021. The average of all unit costs for 2022 is an increase of 47% from the previous bid in 2016.

It is anticipated that approximately \$50,000 will be spent during each calendar year on tree trimming and removal.

### **BUDGET IMPACT:**

Sufficient funds have been budgeted in the Solid Waste Fund Account: 230-441-44300-956.000.

### **ATTACHMENTS:**

Proposal: CHOP 11/16/21



November 9, 2021

Wyoming City Clerk's Office  
Wyoming City Hall  
1155 28<sup>th</sup> St SW  
Wyoming, MI 49509

To Whom It May Concern,

Please see enclosed items for the Tree Trimming and Removal (2022-2024) bid:

Signed Bid Form  
Signed Contract Form

We have no deviations or variations to the bid specs, nor will we be using any subcontractors.

Sincerely,



Ben Euwema  
Project Manager

BE/jlg

1505 Steele Ave SW, Grand Rapids, MI 49507

3144 Yew Milford, MI 48381

Phone: 616 583-9821 Fax: 616 583-9824 Email: [Info@we-chop.com](mailto:Info@we-chop.com)



## BID FORM

Page 1 of 5

### Bid for Tree Trimming and Removal (2022 - 2024)

The bidder identified below submits the attached bid materials, including the price(s) stated on the Bid Form.

By signing this Bid Form, the bidder identified below represents, attests and promises, the bidder:

1. Has reviewed and is familiar with all plans and specifications, including any issued addenda and any interpretations, and any information provided at any pre-bid meeting.
2. Has reviewed, meets, and will comply with all the Standard Terms and Conditions except those specifically stated in the materials submitted with this bid form, including, without limitation, all the applicable insurance and bonding requirements.
3. If applicable, is familiar with the Work site and Work site conditions.
4. Accepts full responsibility for its conclusions relative to the nature and probable difficulties of performing the work specified, and no additional payments will be made by the City due to unanticipated difficulties encountered in performing the actual work.

Unless the specifications otherwise state, the following is provided for statistical purposes only.

Is the bidder a:

Woman Owned Company?

YES

☐

NO

☒

Minority Owned Company?

☐☒

Section 3 Certified Contractor?

☐☒

If yes, Dunns #: \_\_\_\_\_

Are you, or the business owner related to any elected official or employee of the City?

☐☒

If yes, list name and relationship: \_\_\_\_\_

Is the bidder willing to honor bid pricing for the following for the term of this bid?

Kent County Municipalities

☐☒

Ottawa County Municipalities

☐☒

Wyoming Public Schools

☐☒

**BID FORM, CONTINUED**

Page 2 of 5

**CONTACTS:**

## Primary Contact:

Name: Ben Euwema Title: Project Manager  
 Email: beuwema@we-chap.com Phone: 616 293-3696

## Emergency/After Hours Contact:

Name: Doug Herrema Title: manager  
 Email: dherrema@we-chap.com Phone: 616 437-1837

**AREA TREE TRIMMING AND DISPOSAL**

PAY ITEM	UNIT	2022	2023	2024
Area 1	EA	29,750.00	30,642.00	31,561.00
Area 2	EA	30,188.00	31,093.00	32,026.00
Area 3	EA	20,125.00	20,728.00	21,350.00
Area 4	EA	23,187.00	23,883.00	24,600.00
Area 5	EA	26,250.00	27,037.00	27,848.00
Area 6	EA	19,250.00	19,827.00	20,422.00
Area 7	EA	31,500.00	32,445.00	33,418.00
Area 8	EA	36,750.00	37,853.00	38,989.00
Area 9	EA	21,438.00	22,080.00	22,743.00
Area 15	EA	14,875.00	15,321.00	15,780.00
Area 20	EA	7,525.00	7,750.00	7,984.00

# BID FORM, CONTINUED

Page 3 of 5

## TREE TRIMMING AND DISPOSAL OF BRANCHES

PAY ITEM (DBH)	UNIT	2022		2023		2024	
		SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)
<6"	EA	21.00	90.00	21.50	92.75	22.25	95.50
6"-12"	EA	48.00	121.00	49.50	124.50	50.90	128.00
12"-18"	EA	82.00	190.00	84.50	195.00	87.00	201.00
18"-24"	EA	176.00	280.00	181.00	288.00	186.00	297.00
24"-30"	EA	265.00	415.00	272.00	427.50	281.00	440.00
30"-36"	EA	390.00	650.00	402.00	670.00	414.00	690.00
>36"	EA	550.00	945.00	566.50	973.00	583.50	1,003.00

## TREE REMOVAL, INCLUDING STUMP REMOVAL

PAY ITEM (DBH)	UNIT	2022		2023		2024	
		SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)	EMERGENCY WORK (UNIT COST)
<6"	EA	165.00	247.00	170.00	254.00	175.00	262.00
6"-12"	EA	250.00	375.00	257.50	386.00	265.00	398.00
12"-18"	EA	412.00	618.00	424.00	636.00	437.00	655.00
18"-24"	EA	742.00	1,113.00	764.00	1,146.00	787.00	1,180.00
24"-30"	EA	1,155.00	1,732.00	1,189.00	1,784.00	1,225.00	1,837.00
30"-36"	EA	1,780.00	2,670.00	1,833.00	2,750.00	1,888.00	2,832.00
>36"	EA	2,640.00	3,960.00	2,719.00	4,078.00	2,800.00	4,201.00



## Page 4 of 5

PAY ITEM  (DBH)	UNIT	2022	2023	2024
		SCHEDULED WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)	SCHEDULED WORK (UNIT COST)
<6"	EA	89.00	91.00	95.00
6"-12"	EA	112.00	115.00	119.00
12"-18"	EA	187.00	192.00	198.00
18"-24"	EA	315.00	324.00	334.00
24"-30"	EA	412.00	424.00	437.00
30"-36"	EA	600.00	618.00	636.00
>36"	EA	745.00	767.00	790.00

[illegible]City of  
**Wyoming**  
Michigan



**BID FORM, CONTINUED**

Page 5 of 5

Procare Tree Service LLC

LEGAL NAME OF COMPANY

Chop

BUSINESS NAME / D.B.A., IF DIFFERENT FROM ABOVE

LLC - Michigan

FORM OF BUSINESS and STATE IN WHICH FORMED -- e.g. partnership, corporation, limited liability company, professional corporation and the state in which it was formed

1505 Steele Ave SW

STREET ADDRESS

Grand Rapids

CITY

MI

STATE

49507

ZIP CODE

Ben Eeuwema

BID CONTACT NAME (PLEASE PRINT)

616 583-9821

BUSINESS PHONE

616 293-3696

CELL PHONE

beuwema@we-chop.com

EMAIL ADDRESS

616 583-9824

FAX NUMBER



SIGNATURE FOR BIDDER

11-9-21

DATE

Ben Eeuwema, project manager

PRINTED NAME AND TITLE OF PERSON SIGNING



2ND SIGNATURE FOR BIDDER

11-9-21

DATE

Jay Gorman, Admin Asst

PRINTED NAME AND TITLE OF 2ND PERSON SIGNING

## CONTRACT FORM

Page 1 of 2

This Contract Form must be signed by the Bidder and provided as part of the Bid submittal. If the Bidder is selected, the Contract is approved by the City Council, the City receives all bonds, insurance and other required documents, the City Mayor, Clerk and Attorney will sign this contract form. A copy will be provided to the Contractor.

### City Standard Contract for Tree Trimming and Removal (2022 - 2024)

This Contract is made as of the Effective Date between the City and the Contractor.

"Contract Documents" means the bid together with the invitation to bid, bid specifications, city standard terms and conditions, plans, instructions to bidders, bid form, any prequalification submittals filed by the bidder, and other documents comprising of or required in the bid package, City Council resolution, insurance, and any required bonds.

"City" means the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, Wyoming, MI 49509.

"Contractor" means:

Procare Tree Service LLC

LEGAL NAME OF COMPANY

Chap

BUSINESS NAME / D.B.A., IF DIFFERENT FROM ABOVE

LLC - Michigan

FORM OF BUSINESS and STATE IN WHICH FORMED — e.g. partnership, corporation, limited liability company, professional corporation and the state in which it was formed

1505 Steele Ave SW

STREET ADDRESS

Grand Rapids

CITY

MI

STATE

49507

ZIP CODE

"Effective Date" means the day after the date the Contract is approved by the City Council and the City receives all bonds, insurance documents, and other documents required from Contractor.

### Terms and Conditions

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Contractor will provide the materials and services in accordance with the Bid Documents.
2. City will pay the Contractor in accordance with the Bid Documents.
3. Waived or modified specifications are as follows:

No payment bond is required. No performance bond or other form of performance assurance is required.

4. This is the only agreement between the parties regarding its subject matter. There are no other agreements, representations or warranties. **No terms and conditions apply other than those expressly and fully stated in the Contract Documents.** This contract can be amended only in writing signed by both City and Contractor.

City and Contractor have signed this Contract as of the Effective Date.

## CONTRACT FORM

Page 2 of 2

### City of Wyoming

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. Vandenberg, City Clerk

Date signed: \_\_\_\_\_

### Contractor

By: \_\_\_\_\_  
Signature of Bidder

Ben Ewema  
Printed Name of Bidder

Project Manager  
Title

Date signed: 11-9-21

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE FINAL PAYMENT FOR THE  
PENNY LANE STORM SEWER OUTFALL MODIFICATION

WHEREAS:

1. City Council awarded the bid for the Penny Lane storm sewer outfall modification on October 18, 2021, via Resolution number 27155.
2. As detailed in the attached staff report, additional work was required in order to complete the project increasing the total cost by \$4,200.00.
3. It is recommended the City Council approve final payment in the amount of \$53,862.50 to Quantum Construction Company.
4. Funds are available in the capital outlay storm sewer account number 400-441-45200-972.452, and this project was approved with a contingency to cover such additional costs.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby approve final payment of \$53,862.50 to Quantum Construction Company for the Penny Lane storm sewer outfall modification.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried	Yes
	No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

---

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Pay Estimate

Resolution No. \_\_\_\_\_



## **STAFF REPORT**

Date: December 13, 2021

Subject: Penny Lane Storm Sewer Outfall Modification – Final Payment

From: Peter Klooster, Civil Engineer

Date of Meeting: December 20, 2021

---

### **RECOMMENDATION:**

It is recommended that the City Council approve final payment of \$53,862.50 to Quantum Construction Company for the Penny Lane Storm Sewer Outfall Modification.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

The storm sewer system for the Strawberry Fields plat outlets between Lots 13 and 14 via a 36-inch diameter pipe then down a riprap channel to a detention pond. The riprap channel had degraded due to its steep grade and was causing sloughing into the pond, causing damage to the adjacent properties and depositing sediment into the pond. If left unrepaired, the problem would have worsened and caused further damage to the pond and yards.

### **DISCUSSION:**

On October 18, 2021, the City of Wyoming awarded a contract for the Penny Lane Storm Sewer Outfall Modification project to Quantum Construction Company. Construction began in November and was completed on December 9. During construction, a flared end section called out to be salvaged was determined to be unsalvageable and was replaced with new. The additional cost to remove the flared end section and install new added \$4,200.00 to the original contract total.

### **BUDGET IMPACT:**

There is sufficient money in the capital improvement fund (account no. 400-441-45200-972.452) for the addition to the Penny Lane Storm Sewer Outfall Modification contract. The approved total project cost of \$75,000.00 included enough contingency for this addition.

# CITY OF WYOMING

1155 28TH STREET S. W.  
WYOMING, MI 49509

AUTHORIZATION FOR PAYMENT FOR WORK COMPLETED ON THE FOLLOWING CONTRACT

## 2021 Penny Lane Outfall

		0	Estimate # 1	
IDR START		10/13/2021		
IDR END		12/9/2021		
ACCOUNT NO.	REQUISITION	THIS ESTIMATE	TOTAL	
400-441-45200-972.452 Cap Outl Storm	\$ 49,662.50	\$ 49,662.50	\$ 49,662.50	
400-441-45200-972.452 Cap Outl Storm	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00	
		<hr/>	<hr/>	
		\$ 53,862.50	\$ 53,862.50	

CONTRACTOR:

Quantum Construction Company  
PO Box 321  
Douglas, MI 49406

PO# 2021-00000520

CONTRACT PRICE: \$ 53,862.50

---

**\$ 53,862.50**

DATE OF LAST ESTIMATE: N/A

DATE OF THIS ESTIMATE: 12/9/2021

TOTAL AMOUNT EARNED AS SHOWN ON ESTIMATE 1 \$ 53,862.50

LESS PREVIOUS ESTIMATES \$ -

AMOUNT DUE CONTRACTOR \$ 53,862.50

PREPARED BY: 

REVIEWED BY: \_\_\_\_\_

# Quantum Construction Company

PO Box 321  
Douglas, MI 49406

Phone: (269) 857-3027  
Fax: (269) 857-8384

<b>To:</b> City Of Wyoming <b>Address:</b> 2660 Burlingame SW Wyoming, MI 49509	<b>Contact:</b> <b>Phone:</b> (616) 230-7254 <b>Fax:</b> (616) 249-3487
<b>Project Name:</b> Penny Lane End Section <b>Project Location:</b>	<b>Bid Number:</b> <b>Bid Date:</b> 12/7/2021

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
	Remove And Dispose Of Existing End Section And Grate.	1.00	UNIT	\$4,200.00	\$4,200.00
	Supply And Install New 36" RCP End Section And Grate.				

**Total Bid Price: \$4,200.00**

<b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and are hereby accepted.  <b>Buyer:</b> _____ <b>Signature:</b> _____ <b>Date of Acceptance:</b> _____	<b>CONFIRMED:</b> <b>Quantum Construction Company</b>  <b>Authorized Signature:</b> _____ <b>Estimator:</b> _____
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RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE FINAL PAYMENT FOR THE  
2021 PUBLIC WORKS POND REHABILITATION PROJECT

WHEREAS:

1. City Council awarded the bid for the 2021 Public Works Pond Rehabilitation Project on April 19, 2021, via Resolution number 26970.
2. As detailed in the attached staff report, additional work was required in order to complete the project increasing the total cost by \$7,567.51.
3. It is recommended the City Council approve final payment in the amount of \$13,878.00 to Katerberg Verhage, Inc..
4. Funds are available in the capital outlay storm sewer account number 400-441-45200-972.452, and this project was approved with a contingency to cover such additional costs.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby approve final payment of \$13,878.00 to Katerberg Verhage, Inc. for the 2021 Public Works Pond Rehabilitation Project.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Pay Estimate

Resolution No. \_\_\_\_\_



## **STAFF REPORT**

Date: December 14, 2021

Subject: 2021 Public Works Pond Rehabilitation Project – Final Payment

From: Peter Klooster, Civil Engineer

Date of Meeting: December 20, 2021

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### **RECOMMENDATION:**

It is recommended that the City Council approve final payment of \$13,878.00 to Katerberg Verhage, Inc. for the 2021 Public Works Pond Rehabilitation Project.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Reliable storm water infrastructure is critical for proper drainage and the protection of homes, businesses, and services during flood events. This pond is part of a stormwater system that serves an upstream area of approximately 598 acres including the Rogers Heights and Jackson Park neighborhoods.

### **DISCUSSION:**

On April 19, 2021, the City of Wyoming awarded a contract for the 2021 Public Works Pond Rehabilitation Project to Katerberg Verhage, Inc. Construction began in July and was completed in October. During construction, conditions were discovered that required removal of additional pipe that needed to be replaced. Additionally, site conditions during construction indicated that additional riprap would be beneficial to protect the structure and access path that were being constructed. The cost for this additional work was \$13,878.00, resulting in an increase of \$7,567.51 to the original contract total.

### **BUDGET IMPACT:**

There is sufficient money in the capital improvement fund (account no. 400-441-45200-972.452) for the addition to the 2021 Public Works Pond Rehabilitation Project contract. The approved total project cost of \$280,000.00 included enough contingency for this addition.

# CITY OF WYOMING

1155 28TH STREET S. W.  
WYOMING, MI 49509

AUTHORIZATION FOR PAYMENT FOR WORK COMPLETED ON THE FOLLOWING CONTRACT

## 2021 Pond Rehab - drainage improvements

2020.5 Estimate # 3

IDR START  
IDR END

ACCOUNT NO.	REQUISITION	THIS ESTIMATE	TOTAL
400-441-45200-972.452 Cap Outl Storm	\$ 256,766.00	\$ 13,878.00	\$ 264,333.51
	<hr/>	<hr/>	<hr/>
	\$ 256,766.00	\$ 13,878.00	\$ 264,333.51

CONTRACTOR:

Katerberg-Verhage  
3717 Michigan NE  
Grand Rapids, MI 49525

PO# 2021-00000520

CONTRACT PRICE: \$ 256,766.00

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\$ 256,766.00

DATE OF LAST ESTIMATE: 12/2/2021

DATE OF THIS ESTIMATE: 12/14/2021

TOTAL AMOUNT EARNED AS SHOWN ON ESTIMATE	3	\$ 264,333.51
LESS PREVIOUS ESTIMATES		\$ 250,455.51
AMOUNT DUE CONTRACTOR		\$ 13,878.00

PREPARED BY: \_\_\_\_\_



REVIEWED BY: \_\_\_\_\_

 12-15-21



# Construction Pay Estimate Report

City of Wyoming

12/15/2021 8:28 AM

FieldManager 5.3c

Contract: .2020.5, Pond Rehab - drainage improvements

Estimate Date	Estimate No.	Entered By	Estimate Type	Electronic File Created	All Contract Work Completed	Construction Started Date
12/15/2021	3	Peter J Klooster	FINAL	No	10/1/2021	8/31/2021
Prime Contractor Katerberg-Verhage, Inc.				Managing Office City of Wyoming		

## Item Usage Summary

Item Description	Item Code	Prop. Line	Project	Category	Project Line No.	Item Type	Mod. No.	Quantity	Dollar Amount
RIP-RAP OVER GEOTEXTILE SPILLWAY	_4012	0050	2019.12	0000	0050	00	000	60.000	\$9,720.00
STORM SEWER ( ) 76 x 48 ELLIPTICAL	_4200	0080	2019.12	0000	0080	00	000	9.000	\$4,158.00

Total Estimated Item Payment: \$13,878.00

## Time Charges

Site	Site Description	Site Method	Days Charged	Liq. Damages
00	SITE NUMBERS SHOULD BE CODED 00	Completion Date		\$0
Total Liquidated Damages:				\$0

## Pre-Voucher Summary

Project	Voucher No.	Item Payment	Stockpile Adjustment	Dollar Amount
2019.12, drainage improvements	0003	\$13,878.00	\$0.00	\$13,878.00
Voucher Total:				\$13,878.00

## Summary

Current Voucher Total:	\$13,878.00	Earnings to date:	\$264,333.51
-Current Retainage:	\$0.00	- Retainage to date:	\$0.00
-Current Liquidated Damages:	\$0.00	- Liquidated Damages to date:	\$0.00
-Current Adjustments:	\$0.00	- Adjustments to date:	\$0.00
<b>Total Estimated Payment:</b>	<b>\$13,878.00</b>	Net Earnings to date:	\$264,333.51
		- Payments to date:	\$250,455.51
		<b>Net Earnings this period:</b>	<b>\$13,878.00</b>



## Construction Pay Estimate Report

City of Wyoming

12/15/2021 8:28 AM

FieldManager 5.3c

### Estimate Certification

I certify the items included on this report constitute my estimate of work completed and due the contractor as of the date of this document. I also certify the prime contractor is meeting all requirements for minority percentages and the payrolls are current.

Peter Klooster (Project Engineer) and/or

12/15/21

(Date)

(Construction Engineer)

12-15-21

(Date)





# Construction Pay Estimate Amount Balance Report

Estimate: 3

12/15/2021 8:28 AM  
FieldManager 5.3c

City of Wyoming

## Contract: .2020.5, Pond Rehab - drainage improvements

Item Code	Item Description	Prop. Line	Project	Category	Authorized Quantity	Quantity This Estimate	Qty. Paid To Date	Total Qty. Placed	% Cpt	Unit Price	Dollar Amt. Paid To Date
_1000	MOBILIZATION	0005	2019.12	0000	1,000		1,000	1,000	100%	19,100.00000	\$19,100.00
_1001	CLEARING	0010	2019.12	0000	0.500		0.500	0.500	100%	2,000.00000	\$1,000.00
_1002	REMOVE TREES 8" TO 18"	0015	2019.12	0000	28,000		28,000	28,000	100%	307.00000	\$8,596.00
_1003	REMOVE TREES 19" TO 36"	0020	2019.12	0000	9,000		9,000	9,000	100%	670.00000	\$6,030.00
_1004	REMOVE TREES 37" OR LARGER	0025	2019.12	0000	1,000		1,000	1,000	100%	1,185.00000	\$1,185.00
_1025	REMOVE HMA SURFACE	0030	2019.12	0000	1,000.000		1,000.000	1,000.000	100%	4.00000	\$4,000.00
_1125	REMOVE EX SEWER	0035	2019.12	0000	100,000		100,000	100,000	100%	18.00000	\$1,800.00
_1145	REMOVE EX DRAINAGE STRUCTURE	0040	2019.12	0000	1,000		1,000	1,000	100%	2,695.00000	\$2,695.00
_3154	SEWER TAP 12"	0045	2019.12	0000	1,000		1,000	1,000	100%	550.00000	\$550.00
_4012	RIP-RAP OVER GEOTEXTILE SPILLWAY	0050	2019.12	0000	120,000	60,000	120,000	120,000	100%	162.00000	\$19,440.00
_4014	DRAINAGE STRUCTURE () 10' DIAMETER	0055	2019.12	0000	1,000		1,000	1,000	100%	72,710.00000	\$72,710.00
_4016	DRAINAGE STRUCTURE 4' DIA (CATCH BASIN)	0060	2019.12	0000	1,000		1,000	1,000	100%	2,035.00000	\$2,035.00
_4031	COVER AND CASTING ES6508	0065	2019.12	0000	1,000		1,000	1,000	100%	935.00000	\$935.00
_4100	FLARED END SECTION () 18"	0070	2019.12	0000	1,000		1,000	1,000	100%	770.00000	\$770.00
_4142	END SECTION GRATE () 18" SCREEN	0075	2019.12	0000	1,000		1,000	1,000	100%	330.00000	\$330.00
_4200	STORM SEWER () 76 x 48 ELLIPTICAL	0080	2019.12	0000	64,000	9,000	64,000	64,000	100%	462.00000	\$29,568.00
_4201	STORM SEWER 12" (0' - 14' DEPTH)	0085	2019.12	0000	8,000		8,000	8,000	100%	100.00000	\$800.00
_4222	STORM SEWER 18" (14' - 25' DEPTH)	0090	2019.12	0000	30,000		30,000	30,000	100%	191.00000	\$5,730.00
_6100	SITE GRADING	0095	2019.12	0000	1,000		1,000	1,000	100%	42,735.00000	\$42,735.00
_6354	HMA MIXTURE - 5E1	0100	2019.12	0000	146,510		146,510	146,510	100%	105.00000	\$15,383.55
_6362	HMA MIXTURE - 3C	0105	2019.12	0000	154,830		154,830	154,830	100%	112.00000	\$17,340.96

Contract: .2020.5

Estimate: 3

Page 1 of 2



# Construction Pay Estimate Amount Balance Report

Estimate: 3

12/15/2021 8:28 AM  
FieldManager 5.3c

City of Wyoming

Item Description	Item Code	Prop. Line	Project	Category	Authorized Quantity	Quantity This Estimate	Qty. Paid To Date	Total Qty. Placed	% Cpt	Unit Price	Dollar Amt. Paid To Date
CLASS A SEED	_7014	0110	2019.12	0000	2,500.000		2,500.000	2,500.000	100%	2.00000	\$5,000.00
MULCH BLANKET	_7020	0115	2019.12	0000	2,500.000		2,500.000	2,500.000	100%	2.20000	\$5,500.00
SOIL EROSION SILT FENCE	_7022	0120	2019.12	0000	0.000		0.000			9.00000	
MINOR TRAFFIC CONTROL DEVICES	_8010	0125	2019.12	0000	1.000		1.000	1.000	100%	1,100.00000	\$1,100.00
Percentage of Contract Completed(curr): 100%											
(total paid to date / total of all authorized work)											
Total Amount Paid This Estimate:											\$13,878.00
Total Amount Paid To Date:											\$264,333.51

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A QUOTE FROM  
FERGUSON WATERWORKS FOR WATER METERS AND STRAINERS AND TO  
AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT

WHEREAS:

1. It is recommended the City Council accept a quote from Ferguson Waterworks for water meters and strainers for the 2022 calendar year.
2. It is estimated that the City will spend approximately \$400,000 this coming calendar year on water meter replacements.
3. Funds are available in the water fund, transmission and distribution, meters account number 591-591-56500-775.000.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept a quote from Ferguson Waterworks for water meters and strainers for the 2022 calendar year.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the contract.
3. The Wyoming City Council does hereby waive the provisions of Sections 2-252, 2-253, 2-254 and 2-256 of the City Code regarding publication and posting of bid notices, notification of bidders and the bid opening procedure.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Quote

Contract

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: December 7, 2021

Subject: Water Meters, Strainers and Meter Equipment

From: Aaron Vis, Assistant Director of Public Works - Maintenance

Date of Meeting: December 20, 2021

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### **RECOMMENDATION:**

It is recommended that the City Council accept a quotation for water meters and strainers from Ferguson Waterworks for the 2022 calendar year.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Water meters are used for billing both water and sewer use for all customers in the City. The City utilizes two meter manufacturers, Sensus and Neptune, in order to match the best meter with the most appropriate application thereby ensuring fair and equitable water and sewer billing. Water meters are replaced based on age and condition throughout the community, and all meet the definition of “lead free” as defined within the Safe Drinking Water Act.

### **DISCUSSION:**

Neptune water meters are provided by Ferguson Waterworks as the sole source distributor for water meters in the State. These water meters are primarily used in residential applications.

The attached meter pricing is approximately a 28% increase from the current pricing structure which has remained unchanged since 2019.

It is estimated that the City will spend approximately \$400,000 this coming calendar year on water meter replacements. These replacements will occur in conjunction with the AMI project and are AMI compatible.

### **BUDGET IMPACT:**

Sufficient funds are available in the water fund, transmission and distribution, meters account number 591-591-56500-775.000.

### **ATTACHMENT:**

Ferguson Waterworks Contract





**CITY PURCHASING CONTRACT**  
**CITY OF WYOMING, MICHIGAN**  
**(MORE THAN \$7,500)**

This Contract is made as of the Effective Date between the City and the Supplier.

"City" means the City of Wyoming, a Michigan municipal corporation of 1155 28<sup>th</sup> St SW, PO Box 905, Wyoming, MI 49509-0905.

"Effective Date" means: December 1, 2021.

"Items" means the parts, equipment, or other items the City is purchasing from the Supplier as itemized in the Proposal.

"Proposal" means the Supplier's proposal attached as Exhibit B and includes any City-issued plans and specifications on which the supplier's proposal is based.

"Standard Terms and Conditions" means the attached single page Exhibit A entitled "City Purchasing Standard Terms and Conditions."

"Supplier" means: Ferguson Enterprises d/b/a Ferguson Waterworks  
[Name of supplying entity]  
A Foreign limited liability company in Virginia  
[State and type of entity, e.g. corporation, limited liability company, etc.]  
12500 Jefferson Ave. PO Box 2778  
[Supplier's street address]  
Newport News, VA 23602  
[Supplier's city, state & zip]

**TERMS AND CONDITIONS**

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Supplier will supply the Items as detailed in the Proposal.
2. City will pay the Supplier in accordance with the Proposal.
3. Supplier represents and warrants, except for those specifically waived or modified in this paragraph Supplier is complying with and will comply with the Standard Terms and Conditions. Waived or modified conditions are as follows:

None.

[Identify those the City Attorney has agreed may be waived or the City attorney approved modifications or write "None"]

4. This is the only agreement between the parties regarding the Purchase that is the subject of the Proposal and there are no other agreements, representations or warranties except as are stated in the Proposal. This contract can be amended only in writing signed by both City and Supplier.

City and Supplier have signed this Contract as of the Effective Date.

**CITY OF WYOMING**

By: \_\_\_\_\_  
Jack A. Poll, Mayor


By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: \_\_\_\_\_, 20\_\_

Approved as to form:

  
\_\_\_\_\_  
Scott G. Smith, City Attorney

**Ferguson Enterprises d/b/a Ferguson Waterworks**

By:   
\_\_\_\_\_  
[Signature officer, director or principal of Supplier]  
Bradley Klein - Area Manager  
[Typed/Printed Name & Title of Person Signing for Supplier]

Date signed: December 6, 2021



**CITY PURCHASING STANDARD TERMS AND CONDITIONS**

1. **Applicability.** Except as modified in writing signed by either the Mayor and City Clerk or the City Manager, these Standard Terms and Conditions (**these Terms**) apply to City of Wyoming (City) purchases of parts, equipment or other goods that do not involve any services from the supplier identified on the face of the contract (Supplier). By signing the contract Supplier attests it complies and will comply with these Terms.

2. **Legal Compliance.** Supplier will comply with all applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court of competent jurisdiction.

3. **Qualifications.** Supplier represents and promises that:

A. Neither Supplier nor Supplier's principals, owners, officers, shareholders, key employees, directors, members or partners (i) is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) has within 3-years preceding this contract been convicted of or had a judgment against it/him/her for fraud or a criminal offense connected with obtaining or attempting to obtain a public contract, for violating antitrust statutes, or for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) is presently charged with any of the preceding offenses; or (iv) has within 3-years preceding this contract had a public transaction terminated for cause or default.

B. The successful bidder, its subcontractors and their respective personnel must register in the federal System for Award Management (SAM) list and be in good standing (i.e., not suspended or debarred from receiving federal funds).

C. Supplier is not an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.

4. **Nondiscrimination and Respect.** City is committed to equity, fairness, impartiality, courtesy, respect and nondiscrimination in all programs, benefits, and actions, including in its contracts with suppliers. Accordingly:

A. Supplier and Supplier's personnel in (i) employment actions, or (ii) solicitation, bidding or contracts for materials, will not discriminate based on race, color, religion, national origin, age, sex, height, weight, marital status, familial status, mental or physical disability, genetic information, or any other reason prohibited by law unrelated to the ability to perform the duties of a job or position or supply the materials. For purposes of this section, "sex" means sex and gender, sex or gender stereotypes, sexual orientation, gender identity (including transgender status) or expression, and pregnancy, childbirth or conditions related to pregnancy or childbirth. Supplier and Supplier's personnel will comply with applicable state and federal laws, rules, regulations, orders, and other requirements regarding discrimination and inclusion, including, for example, Title VI of the federal Civil Rights Act of 1964, Michigan's Elliott-Larsen Civil Rights Act, Michigan's Persons with Disabilities Civil Rights Act, the federal Age Discrimination Act of 1975, and §504 of the federal Rehabilitation Act of 1973.

1. Supplier will, in solicitations or advertisements for employees placed by or on behalf of Supplier, state that all qualified applicants will be considered for employment without regard to race, color, religion, height, weight, marital status, sex, age,

national origin, or disability unrelated to a person's ability to perform the duties of a particular job or position.

2. Supplier will send to each labor union or representative of workers with which Supplier has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Supplier's commitments under this section and will post copies of that notice in conspicuous places available to employees and applicants for employment under this Contract.

B. Noncompliance with this section is a material breach of this Contract that can result in (i) withholding payments to Supplier until Supplier complies, (ii) Contract cancellation, termination, or suspension, in whole or in part, and/or (iii) Supplier's ineligibility to bid on or enter future City contracts.

C. Supplier will retain and, when requested, provide copies of all information and reports required by all laws, rules, regulations, orders, directives and guidance referred to in this section as determined by City or a state or federal agency to be pertinent to ascertain Supplier's compliance. If requested information is exclusively possessed by another who fails or refuses to furnish it, Supplier will so certify to City.

E. Supplier must include the requirements of paragraphs A through C in all material procurement and equipment leasing documents, directly or indirectly related to this Contract. Supplier must take any action affecting any material supplier or equipment lessor as City deems reasonably necessary to comply with this section including sanctions for noncompliance.

5. **Ethical Standards.** Supplier and its directors, members, partners, officers and employees, and any Supplier parent, affiliate, or subsidiary has not engaged in and will not: (i) engage in an act creating an appearance of impropriety with respect to this contract; (ii) attempt or appear to influence an elected or appointed City officer or employee by a direct or indirect offer of anything of value; or (iii) pay or agree to pay any person, other than its employees and consultants, any consideration contingent upon the award of this contract. No owner, director, officer, member, partner or key employee of Supplier or any Supplier parent, affiliate, or subsidiary is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or another City officer or board/commission member except as already disclosed in writing to City. Supplier will immediately notify City of any change in this statement.

6. **Intellectual Property.** Supplier guarantees the sale and City use of articles, software, copies, records or other intellectual property provided by the Purchase will not infringe any copyright, patent, trademark or other intellectual property rights. Supplier will, without expense to City, defend all actions against City or City's officers or employees for alleged infringement of intellectual property rights because of their sale or use and will pay all amounts recoverable in any such action.

7. **Quality.** Unless otherwise stated in the Supplier's proposal, all materials and items supplied will be new, the best of their respective kind, and free from defects.

8. **Taxes.** City is generally exempt from federal and state taxes. A copy of its tax certificate of exemption can be requested by contacting the City Finance Department.

9. **Manufacturer Information/Warranties.** Supplier will provide City all manufacturer parts lists, assembly or maintenance

information, and other documents provided by the manufacturer for all items provided under the Purchase and shall ensure any warranties for such items are held by City.

10. Records. City is a public entity receiving funds from other governmental agencies, and must retain, be able to obtain, and/or audit records related to City purchases. Supplier will retain all records related to this contract for at least 6 years and will, upon City's request, provide copies of and allow City to audit all retained records.

11. Assignment/Beneficiaries. Unless otherwise provided in writing, (i) no right or duty of Supplier under the Purchase may be assigned or delegated without City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of this contract.

12. Independence. Supplier is independent of City and none of Supplier's personnel shall be or be represented to be City officers or employees. Supplier is solely responsible for the acts, omissions and statements of Supplier's personnel.



Exhibit B  
Proposal





*Meter & Automation Group*

Ferguson Enterprises

PO Box 2778

12500 Jefferson Ave, Newport News, Virginia  
23602, USA

December 1, 2021

City of Wyoming Public Works Department  
2660 Burlingame Ave SW  
Wyoming, MI 49509

Subject: Water Meter Pricing for 2022

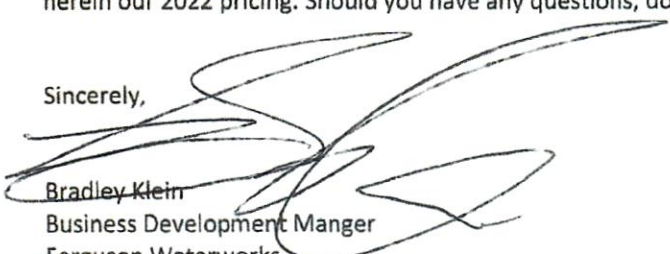
To Whom It May Concern:

Ferguson Waterworks and Neptune Technology Group sincerely appreciates the opportunity to continue a long-term partnership with the City of Wyoming. In that spirit of partnership – and looking toward the long-term future of your metering system – we submit our formal response to the City of Wyoming's request for Water Meter Pricing for the year 2022.

Ferguson Waterworks is a level one distributor of Neptune water metering products, and the sole source distributor for Neptune in the State of Michigan and eight other states across the country. Our Meter and Automation Michigan Headquarters is in Kentwood, MI and we pride ourselves on ensuring our customers receive their orders quickly and accurately.

We are excited for the opportunity to continue our partnership with the City of Wyoming, and we look forward to forging a long-term partnership as the City's water meter provider. Please find attached herein our 2022 pricing. Should you have any questions, do not hesitate to contact us.

Sincerely,



Bradley Klein  
Business Development Manager  
Ferguson Waterworks

# RESIDENTIAL WATER METERS

		FERGUSON WATERWORKS		
		Price (each)		
Description	Specification	Inside Application Price (each)	Pit Application Price (each)	Rebuild Kit (each) UMF Kit (each)
5/8" X 3/4" Positive displacement type with register, with touchpad	Neptune T-10 ProCoder	\$128.74	\$130.24	\$24.05
5/8" X 3/4" Positive displacement type with register, without touchpad	Neptune T-10 ProCoder	\$128.74	\$130.24	\$24.05
1" Positive displacement type with register, with touchpad	Neptune T-10 ProCoder	\$286.71	\$300.70	\$66.14
1" Positive displacement type with register, without touchpad	Neptune T-10 ProCoder	\$286.71	\$300.70	\$66.14
5/8" X 3/4" Ultrasonic type with register, without touchpad	Neptune Mach 10		\$198.60	N/A
1" Ultrasonic type with register, without touchpad	Neptune Mach 10		\$268.53	N/A
1.5" Ultrasonic type with register, without touchpad, 10", 13"	Neptune Mach 10		\$699.30	N/A
2" Ultrasonic type with register, without touchpad, 10", 15.25", 17"	Neptune Mach 10		\$853.15	N/A
3" Ultrasonic type with register, without touchpad, Compound or Turbine LL	Neptune Mach 10		\$2,671.33	\$1,608.00
4" Ultrasonic type with register, without touchpad, Compound or Turbine LL	Neptune Mach 10		\$3,433.57	\$2,143.00
6" Ultrasonic type with register, without touchpad, Compound or Turbine LL	Neptune Mach 10		\$5,797.20	\$3,215.00
8" Ultrasonic type with register, without touchpad, Turbine LL	Neptune Mach 10		\$8,776.22	\$4,286.00
10" Ultrasonic Type with register, without touchpad, Turbine LL	Neptune Mach 10		\$10,965.03	\$5,358.00
12" Ultrasonic Type with register, without touchpad, Turbine LL	Neptune Mach 10		\$13,160.84	\$6,429.00

# COMMERCIAL WATER METERS

		FERGUSON WATERWORKS		
		Price (each)		
Description	Specification	Inside Application Price (each)	Pit Application Price (each)	UMF Kit (each)
1.5" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$818.18	\$608.00
2" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$818.18	\$608.00
3" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$1,468.53	\$786.00
4" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$1,671.33	\$786.00
6" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$3,118.88	\$1,215.00
8" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$4,629.37	\$1,608.00
10" Turbine type with register, without touchpad	Neptune High Performance Turbine		\$7,244.76	\$2,143.00

# COMMERCIAL WATER METERS

		FERGUSON WATERWORKS		
		Price (each)		
Description	Specification	Price (each)	Price (each)	UMF Kit (each)
2" Compound type with register, without touchpad	Neptune TruFlo	\$1,748.25		\$1,179.00
3" Compound type with register, without touchpad	Neptune TruFlo	\$2,622.38		\$1,572.00
4" Compound type with register, without touchpad	Neptune TruFlo	\$3,412.59		\$1,715.00
6" Compound type with register, without touchpad	Neptune TruFlo	\$5,755.24		\$2,572.00
8" Compound type with register, without touchpad	HP Protectus Fine Service w/kettle strainer	\$17,587.41		\$3,143.00
10" Compound type with register, without touchpad	HP Protectus Fine Service w/kettle strainer	\$20,860.14		\$3,929.00

# COMMERCIAL WATER METERS

		FERGUSON WATERWORKS		
		Price (each)		
Description	Specification	Inside Application Price (each)	Pit Application Price (each)	Rebuild Kit (each)
1.5" Positive displacement type with register, without touchpad	Neptune T-10 ProCoder	\$622.38	\$636.36	\$112.58
2" Positive displacement type with register, without touchpad	Neptune T-10 ProCoder	\$791.61	\$805.59	\$146.88

# STRAINERS

		FERGUSON	
		Price (each)	
Description	Specification		
1.5"	FERGUSON: Bronze Strainer	\$545.45	
2"	FERGUSON: Bronze Strainer	\$545.45	
3"	FERGUSON: Bronze Strainer	\$655.03	
4"	FERGUSON: Bronze Strainer	\$1,678.32	
6"	FERGUSON: Bronze Strainer	\$2,531.47	
8"	FERGUSON: Bronze Strainer	\$4,251.75	
10"	FERGUSON: Bronze Strainer	\$6,643.36	

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT AN AGREEMENT FROM LEXISNEXIS COPLOGIC SOLUTIONS INC.  
FOR A DESK OFFICER REPORTING SYSTEM (DORS) SOFTWARE SUBSCRIPTION AND TO  
AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept an agreement from LexisNexis Coplogic Solutions, Inc. for a two-year subscription for desk officer reporting system (DORS) software.
2. It is estimated the city will spend an estimated \$34,560.00 for the two-year software subscription.
3. It is recommended the City Council authorize the Mayor and City Clerk to execute the agreement.
4. Funds for the desk officer reporting system (DORS) software are as detailed on the attached staff report.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept an agreement from LexisNexis Coplogic Solutions, Inc. for a two-year subscription for desk officer reporting system (DORS) software.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the agreement.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                    No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Quote

Contract

## **STAFF REPORT**

Date: December 14, 2021

Subject: Desk Officer Reporting System Software

From: Captain Timothy Pols

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

It is recommended the City Council approve the purchase of Desk Officer Reporting System software for the Department of Public Safety–Police. The software will be purchased from LexisNexis Coplogic Solutions Inc. This software would be utilized for online reporting of specified incidents to the Public Safety Department.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Online reporting provides an additional link between the Department of Public Safety and the community we serve. It would be accessible to residents through the City’s website. It enhances safety, especially during a pandemic, by providing community members the option to report certain incidents online without unnecessary personal contact with others. Community members will have the choice of reporting online or meeting with a public safety officer to make a report. It demonstrates stewardship by maximizing limited public safety resources and eliminating the need for an immediate police response to minor incidents. It is also estimated that a significant amount of the cost associated with this purchase will be recouped through revenue from community members who purchase copies of reports.

### **DISCUSSION:**

Online reporting provides an additional option for community members to notify the Department of Public Safety of certain incidents which have occurred in the City of Wyoming and that may require police attention and/or follow-up. Online reporting is a growing trend in law enforcement and allows police to receive and evaluate reports made online by community members. The police department would decide what kind of complaints could be reported online and would be able to drive the user experience by asking users to answer questions that qualify them to report online.

Staff has identified software called Desk Officer Reporting System (DORS) as the best product to facilitate online reporting. The product is sold by LexisNexis and would be an add-on to an already established LexisNexis account currently utilized for crash reports. There is also an option to issue “business accounts” to tow companies and pre-approved stores to submit private property impounds or fraud reports. Importing fraud reports from DORS to our records management system (TIMS) would work efficiently. There are several local departments that use TIMS and are successfully utilizing DORS.



DORS would maximize scarce public safety resources. It is estimated that each police report requires approximately 1.5 manpower hours. It is impossible to know exactly how many online reports will be made annually, but a reasonable estimate based on our population, is 1,000 reports per year. This means that incorporating online reporting would free up approximately 1,500 hours for police personnel to conduct other public safety tasks. If an average hourly rate of \$35 is assumed, the department would reallocate \$52,500 by utilizing online reporting.

LexisNexis' DORS software is single-source due to the following factors:

- It is an add-on to already utilized software.
- It is compatible with software utilized by dispatch and the current reporting system. This is critical to its usefulness.
- It allows Wyoming Police to share information with other local agencies who utilize DORS.

The monthly cost to add DORS would be \$1,440/month or \$17,280/year with a two-year minimum commitment. This cost would be offset by rolling over funds generated by the sale of the accident reports to cover the monthly fee. Assuming crash report sales remain consistent, it would offset about 70% of the cost of DORS. LexisNexis currently charges citizens \$12 for obtaining a report and passes \$5 of this fee back to our agency. The fee for a report can be adjusted at our request, and LexisNexis would continue to receive \$7 for each report with our agency receiving the remainder. The offset calculation would be done quarterly by LexisNexis, who would withhold the reimbursement of crash report sales and then provide an updated invoice based on the remaining amount owed.

#### **BUDGET IMPACT:**

The total project cost is \$34,560 for the next two years and includes necessary training and support. This is the concrete number from the quote, but if the crash reporting sales remain consistent, this price will be reduced by approximately 70% through revenue generated by the sale of crash reports.

Funds are budgeted within Fund 285 – Federal Grants Fund.

**Order No. 2**  
**LexisNexis® Desk Officer Reporting System (DORS)**

This Order No. 2 ("**Order**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("**Order Effective Date**") between City of Wyoming ("**Agency**") and LexisNexis Coplogic Solutions Inc. ("**Provider**") and subject to the terms and conditions of the Law Enforcement Agreement effective \_\_\_\_\_, 2021 ("**Agreement**") between the Parties.

1. **TERMS AND CONDITIONS.** All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.
2. **DESCRIPTION OF SERVICES.** Provider, as part of its business has developed and makes available to law enforcement entities an online citizen reporting system called LexisNexis® Desk Officer Reporting System ("**DORS**") enabling individuals, retail companies and other organizations to file reports, crime tips and other forms online to law enforcement.
3. **SCOPE OF SERVICES.** Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Except as provided by Section 2.2. of the Agreement, any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services described below subject to Agency's technology capabilities, processes, and work-flow functionality.

3.1. **Services.** DORS uses the J2EE standard. DORS is designed to gather information on incidents from a member of the general public (user) via an SSL connection. DORS will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate Agency administrator. An email is generated to the user that the report has been submitted. The Agency administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the DORS system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported (as determined during implementation), and sends an appropriate email to the user. The Agency administrator and user can download the approved report and/or print the approved report out. Provider shall provide Report distribution services as set forth in in Section 5 of the Agreement, including an on-line Report distribution website such as LexisNexis®BuyCrash.com (or its successors).

**3.2. Setup and Access.**

Agency Responsibilities.

- a) Coordinate with Provider to establish dates for deployment within the DORS implementation schedule tab;
- b) Provide images for (i) website header image (ii) temporary citizen report image and (iii) final printed PDF report image;
- c) Load provided HTML pages onto Agency website which links to Provider's servers for the Services;
- d) Provide Provider with the schema for the desired file format and/or database schema;
- e) Enable Provider read /write access and test environment with current configuration
- f) Enable Provider VPN access to the exporter, RMS application(s), and other information required for report bridge installation;
- g) Provide timely responses to Provider's questions, which may arise during the setup and configuration process.

Provider Responsibilities.

- a) Coordinate with Agency to establish schedule for deployment within the DORS implementation schedule tab.
- b) Register Agency within Provider's network and load Agency provided images into Agency's implementation of DORS.
- c) Provide Agency with administrator password and credentials for the Services.
- d) Provide Agency with sample operational directives, deployment strategies and sample press release.
- e) Provide Agency with suggestions for the successful deployment of the Services.
- f) Provide Agency with instructions on the easy setup of a kiosk for Agency's headquarters lobby, etc.

Completion Criteria.

This task is considered complete after Provider has delivered listed materials.

**3.3. Configuration.**

Agency Responsibilities.

- a) Coordinate with Provider for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
- b) Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Agency.
- c) Test the optional interface with the RMS application.
- d) Review resulting files with Provider, document any problems, and collaborate with Provider on a plan for corrective action(s).
- e) Provide necessary files for RMS integration.

Provider Responsibilities

- a) Coordinate with Agency for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
- b) Configure export routine for the optional RMS Interface with information provided.
- c) Review resulting files with Agency, document any problems, and collaborate with Agency on a plan for corrective action(s).

Completion Criteria

This task is considered complete when the DORS is accessible on Provider's web server and reports can be filed and interfaced into the RMS (optional).

**3.4. Support and Maintenance.** Provider will provide Support and Maintenance Services in accordance with the terms and conditions set forth in Section 3 of the Agreement.

**3.5.** Pursuant to Section 2.1 of the Agreement, Agency agrees that it shall not use the Services for marketing or commercial solicitation purposes.

**3.6.** As provided by Section 7.1 of the Agreement, Agency acknowledges that certain Services provided under this Order may include the provision of certain personal information data obtained from the state Department of Motor Vehicles ("**DMV Data**") and that such DMV Data may be governed by the Federal Driver's Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws (collectively, the "**DPPA**"), and that Agency is required to comply with the DPPA, as applicable. Agency certifies it has a permissible use under the DPPA to use and/or obtain such information and Agency further certifies it will use such information obtained from Services only for the permissible purpose selected below or for the purpose indicated by Agency electronically while using the Services, which purpose will apply to searches performed during such electronic session:



Please check one below (required):

1.	No permissible use.
2.	Use by a government agency, but only in carrying out its functions.

**4. TERM AND TERMINATION.** This Order shall commence upon the Order Effective Date and shall continue for an initial term of twenty-four (24) months ("**Initial Term**"), whereupon this Order shall automatically renew for additional twelve (12) month periods ("**Renewal Term**") unless either Party provides written notice to the other Party, at least forty five (45) days prior to the expiration of the Renewal Term.

**5. FEES AND PRICE ADJUSTMENTS.** The Fees for the Services shall be subject to the terms set forth in Section 4 of the Agreement.

**5.1.** The Agency Fee is Five Dollars and 00/100 (\$5.00).

**5.1.1.** For the avoidance of doubt, no Agency Fee will be paid with respect to the following:

**5.1.1.1.** When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or

**5.1.1.2.** When one or more components of a Report (e.g., VIN number) is provided to an Authorized Requestor or an Affiliate of Provider by Provider rather than the entirety of the Report being provided; or

**5.1.1.3.** When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or

**5.1.1.4.** When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Order shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate's inventory of previously purchased reports. Agency acknowledges that all reports requested by Agency Requestors shall be provided free of charge.

**5.2. Monthly Services Fees.** Agency shall pay a monthly license Fee for the Services which includes Support and Maintenance Services. Fees for the Services for the Initial Term shall be One Thousand Four Hundred Forty Dollars and 00/100 (\$1,440.00) per month. All Fees shall be invoiced monthly by Provider beginning on the Order Effective Date.

signature blocks on next page



**IN WITNESS WHEREOF**, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

Agency: **City of Wyoming**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Provider: **LexisNexis Coplogic Solutions Inc.**

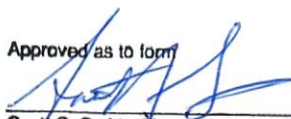
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form



\_\_\_\_\_  
Scott G. Smith, City Attorney

Date: 12/15/2021

**Order No. 3**  
**LexisNexis® Desk Officer Reporting System (DORS)**  
**DORS Crash Reports**

This Order No. 3 ("**Order**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("**Order Effective Date**") between City of Wyoming ("**Agency**") and LexisNexis Coplogic Solutions Inc. ("**Provider**") and subject to the terms and conditions of the Law Enforcement Agreement effective \_\_\_\_\_, 2021 ("**Agreement**") between the Parties.

**1. TERMS AND CONDITIONS.**

All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.

**2. DESCRIPTION OF SERVICES.**

Provider, as part of its business has developed and makes available to law enforcement entities an online citizen reporting system called LexisNexis® Desk Officer Reporting System ("**DORS**") enabling individuals to file and report incidents involving automobile collisions ("**Crash Reports**") online to law enforcement.

**3. SCOPE OF SERVICES.**

Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services described below subject to Agency's technology capabilities, processes, and work-flow functionality.

**3.1. Services.** DORS uses the J2EE standard. DORS is designed to gather information on automobile collisions from a member of the general public (user) via an SSL connection. DORS will issue a temporary Crash Report number to the user and place the temporary Crash Report into an administrative holding area for review and modification by an appropriate Agency administrator. An email is generated to the user that the Crash Report has been submitted. The Agency administrator logs in via an SSL connection and approves, rejects, edits or prints the Crash Report as appropriate. Rejecting a Crash Report deletes it from the DORS system and sends an appropriate email to the user. Approving the Crash Report issues a number and sends an appropriate email to the user. The Agency administrator and user can download the approved Crash Report and/or print the approved Crash Report out. Provider shall provide Crash Report distribution services as set forth in in Section 5 of the Agreement, including an on-line Crash Report distribution website such as LexisNexis® PoliceReports.com (or its successors).

**3.2. Setup and Access.**

Agency Responsibilities.

- a) Provide images for (i) website header image (ii) temporary citizen Crash Report image and (iii) final printed PDF Crash Report image.
- b) Load provided HTML pages onto Agency website which links to Provider's servers for the Services.
- c) Enable Provider read /write access and test environment with current configuration.
- d) Provide timely responses to Provider's questions, which may arise during the setup and configuration process.

Provider Responsibilities.

- a) Register Agency within Provider's network.
- b) Provide Agency with administrator password and credentials for the Services.

Completion Criteria.

This task is considered complete after Provider has delivered listed materials.

### **3.3. Configuration.**

#### Agency Responsibilities.

- a) Coordinate with Provider for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
- b) Using the administrator account, login in and configure the code tables, Crash Report types, and user account for Agency.
- c) Review resulting files with Provider, document any problems, and collaborate with Provider on a plan for corrective action(s).

#### Provider Responsibilities

- a) Coordinate with Agency for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
- b) Review resulting files with Agency, document any problems, and collaborate with Agency on a plan for corrective action(s).

#### Completion Criteria

This task is considered complete when the DORS is accessible on Provider's web server and Crash Reports can be filed.

**3.4. Support and Maintenance.** Provider will provide Support and Maintenance Services in accordance with the terms and conditions set forth in Section 3 of the Agreement.

**4. TERM AND TERMINATION.** This Order shall commence upon the Order Effective Date and shall continue for an initial term of thirty-six (36) months ("**Initial Term**"), whereupon this Order shall automatically renew for additional twelve (12) month periods ("**Renewal Term**") unless either Party provides written notice to the other Party, at least forty-five (45) days prior to the expiration of the Renewal Term.

**5. FEES AND PRICE ADJUSTMENTS.** The Fees for the Services shall be subject to the terms set forth in Section 4 of the Agreement.

**5.1.** The Agency Fee for each Crash Report sold is Five Dollars and 00/100 (\$5.00). There shall be no fee to Agency for the Services.

**5.2.** For the avoidance of doubt, no Agency Fee will be paid with respect to the following:

- 5.2.1.** When an Affiliate of Provider has paid an Agency Fee to acquire a Crash Report for an Authorized Requestor and such Affiliate later resells that Crash Report from its inventory of previously purchased Crash Reports to another Authorized Requestor; or
- 5.2.2.** When one or more components of a Crash Report (e.g., VIN number) is provided to an Authorized Requestor or an Affiliate of Provider by Provider rather than the entirety of the Crash Report being provided; or
- 5.2.3.** When a Crash Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- 5.2.4.** When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Order shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Crash Report and/or specific data extracted from the Crash Report to a third party after the Authorized Requestor has purchased such Crash Report from the Affiliate's inventory of previously purchased reports. Agency acknowledges that all reports requested by Agency Requestors shall be provided free of charge.



**IN WITNESS WHEREOF**, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

Agency: **City of Wyoming**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Provider: **LexisNexis Coplogic Solutions Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form



Scott G. Smith, City Attorney

Date: 12/15/2021



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE ENTERING INTO AN AGREEMENT WITH FLOCK SAFETY  
FOR THE PURCHASE OF LICENSE PLATE AND VEHICLE RECOGNITION CAMERAS AND  
TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council authorize entering into an agreement with Flock Safety for the purchase and service of twelve (12) license plate and vehicle recognition cameras for a total estimated cost of \$30,000.
2. After the first year, there is an annual \$30,000 fee for hardware and software maintenance.
3. Funds for the purchase are available from the American Rescue Plan Act (ARPA).

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby authorize entering into an agreement with Flock Safety for the purchase and service of twelve (12) license plate and vehicle recognition cameras
2. The City Council does hereby authorize an annual \$30,000 fee for hardware and software maintenance.
3. The City Council does hereby waive the provisions of Sections 2-252, 2-253, 2-254 and 2-256 of the City Code regarding publication and posting of bid notices, notification of bidders and the bid opening procedure.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

ATTACHMENTS:

Staff Report

Service Agreement

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: December 1, 2021

Subject: Flock Safety License Plate Reader Cameras

From: Captain Eric Wiler

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

It is recommended the City Council approve the purchase of twelve (12) license plate and vehicle recognition cameras from Flock Safety for the total purchase price of \$30,000 (\$2,500 per camera) for the first year. Payment for the purchase would be made after a 60-day trial period, where the cameras can be returned at no cost. There is a recurring annual fee for hardware and software maintenance of \$30,000 (\$2,500 per camera).

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Like many cities around the country, the City of Wyoming has experienced an increase in violent crime. Although homicides for 2021 are down from an all-time high in 2020, we are still experiencing a significant increase in shooting incidents. To date, there have been 48 shots fired complaints and 24 shootings where a person was struck by a bullet.

Quickly obtaining leads in any criminal investigation increases the probability of identifying suspects and solving the case. By utilizing stationary license plate and vehicle recognition cameras from Flock Safety, the City of Wyoming will be able to enhance our efforts to reduce the violent crime and increase safety for our community. As the camera system only records the exterior of the vehicle and the license plate, it provides objective, unbiased evidence to investigators. The Flock Safety license plate and vehicle recognition cameras require no infrastructure as the cameras use LTE and solar power.

### **DISCUSSION:**

Persons associated with violent crimes are not confined to jurisdictional boundaries and often travel to or from the City of Wyoming in a vehicle. The ability to collaborate with other law enforcement agencies to increase our investigative abilities is crucial to providing a safer community. The Kent County Sheriff's Office will be receiving 25 Flock Safety cameras and, to capitalize on our ability to collaborate with them, Flock Safety cameras would be considered a sole source.

Flock Safety license plate and vehicle recognition cameras do NOT record the interior of a vehicle and are not used for traffic enforcement. Additionally, it is not facial recognition software. Recordings are only stored for 30 days unless a vehicle is identified as a suspect in a criminal complaint and saved by investigators.

### **BUDGET IMPACT:**

This purchase will be made by using \$30,000.00 from the American Rescue Plan Act (ARPA).

Attachments:

Services Agreement Order Form

# flock safety

## Since 2017, Flock Safety has played a critical role in crime reduction and cases solved:

### We provide the evidence for police to solve 185 crimes every day:

- 7 total kidnappings and Amber alerts solved including in Chamblee, GA, Wichita, KS, and Memphis, TN
- Dozens of murders solved including in College Park, GA, Fort Worth, TX, Shelby County, TN, and Hemet, CA
- 100s of robberies and assaults including in Indianapolis, IN, Trussville, AL, and Redlands, CA
- 1000s of stolen vehicles recovered
- 100s of pounds of illegal narcotics seized
- 100s of illegal weapons seized

### We're seeing crime reduction across the county:

- 34% reduction of crime in Marietta, GA - 2019
- 62% reduction in crime in Cobb County, GA - 2020
- 70% reduction in burglaries in San Marino, CA - 2021
- 43% reduction in crime in a Dayton, OH neighborhood - 2020
- 30% reduction in Type A crimes in Shelby County, TN
- 46% fewer car break-ins and 25% fewer motor vehicle thefts at a Community Improvement District (CID) that welcomes over 1 million visitors each year
- Up to 90% reduction in mail theft in residential neighborhoods including Pickwick Commons in Pickwick, IN and Sundance Community in Beaumont, CA

### Stolen vehicles recoveries have totaled:

- \$1.5 million in Fort Worth, TX
- \$1 million+ in Memorial Villages, TX
- \$1 million+ in Hemet, CA
- \$1.9 million+ in Wichita, KS

## FLOCK GROUP INC. SERVICES AGREEMENT ORDER FORM

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY CUSTOMER AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: City of Wyoming	Contact Name: Curtis Holt
Address: 1155 28th St SW Wyoming, Michigan 49509	Phone: (616) 530-7272  E-Mail: curtis.holt@wyomingmi.gov
Expected Payment Method:	Billing Contact:  (if different than above)

Initial Term: 24.00 Renewal Term: 24 Months	Pilot period: First 60 days of Initial Term; option to cancel contract at no cost. Initial Term invoice due after Pilot period. Billing Term: Annual payment due Net 30 per terms and conditions
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Name	Price	QTY	Subtotal
Flock Falcon Camera	\$2,500.00	12.00	\$30,000.00
Implementation Fee	\$0.00	12.00	\$0.00

(Includes one-time fees)

Year 1 Total: \$30,000.00  
Recurring Total: \$30,000.00



# flock safety

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By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	Customer:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

## GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block below (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

### RECITALS

**WHEREAS**, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Service creates images and recordings of suspect vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

**WHEREAS**, Agency desires to purchase, use and/or have installed access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock System (where there is an investigative purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

**WHEREAS**, because Footage is stored for no longer than (thirty) 30 days in compliance with Flock’s records retention policy, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

**WHEREAS**, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the purpose of crime awareness and prevention by police departments and archiving for evidence gathering (“**Purpose**”).

### AGREEMENT

**NOW, THEREFORE**, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

### 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Agency Data**” will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. “**Agency Hardware**” shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “**Agency Hardware**” excludes the Embedded Software

1.3 “**Authorized End User(s)**” shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 “**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 “**Embedded Software**” will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 “**Flock IP**” will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 “**Footage**” means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 “**Hardware**” or “**Flock Hardware**” shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term “**Hardware**” excludes the Embedded Software.

1.9 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.9 below.

1.10 “**Installation Services**” means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 “**Services**” or “**Flock Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.

1.12 “**Support Services**” shall mean Monitoring Services, as defined in Section 2.8 below.

1.13 “**Unit(s)**” shall mean the Agency Hardware together with the Embedded Software.

1.14 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.15 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

## 2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the Order Form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. **WARRANTIES PROVIDED BY SAID THIRD PARTY SERVICE PROVIDERS ARE THE AGENCY’S SOLE AND EXCLUSIVE REMEDY AND FLOCK’S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE.** Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 **Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 **Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency’s in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

2.4 **Usage Restrictions.** The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture (“**Permitted Purpose**”). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than

the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

**2.5 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

**2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted.

#### **2.7 Installation Services.**

**2.7.1 Designated Locations.** For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock and Agency must mutually agree on the location (mounting site or pole), position and angle of the Units (each Unit location so designated by Agency, a "**Designated Location**"). Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in identifying the choices for the Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready. Designated Locations that are suggested by Flock and accepted by Agency without alteration will be known as Flock Designated Locations. After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Agency, any subsequent changes to the deployment plan ("**Reinstalls**") driven by Agency's request will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like.



**2.7.2 Agency Installation Obligations.** Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. The “**Agency Installation Obligations**” include, to the extent required by the deployment plan, but are not limited to electrical work to provide a reliable source of 120V AC power that follow Flock guidelines and comply with local regulations if adequate solar exposure is not available. Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc.), such costs to be approved by the Agency. In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

**2.7.3 Flock’s Obligations.** Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock’s standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are selected by Agency. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock’s obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency can opt out of Flock’s access to Footage after the initial installation which would waive Flock’s responsibility to ensure such action was successful. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor

may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

2.7.4 *Security Interest.* Flock Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Agency agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Agency default in any payment for the Flock Services or any part thereof or offer to sell or auction the Hardware, then Agency authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right. In the event of natural expiration of this Agreement, Flock shall remove Flock Hardware at no additional cost to Agency.

2.8 **Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Agency and shall be paid promptly upon billing.

2.9 **Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at [hello@flocksafety.com](mailto:hello@flocksafety.com). Flock will use commercially reasonable efforts to respond to requests for support. If Agency chooses to self-install Hardware or install Hardware on a mobile location, Flock shall make reasonable commercial efforts to provide On-Site Services, if permissible. Agency shall not be entitled to reimbursement, tolling, or credit for any lapse in Services associated with the Unit malfunction due to installation on mobile locations (i.e. trailers). Agency waives any warranties hereunder for any self-installed Hardware, and Flock shall not be liable for failure to respond to any maintenance requests for self-installed Hardware.

Agency shall be subject to Reinstall Fees for re-positioning Units on mobile locations, or subsequent installation on Flock or other stationary poles.

**2.10 Special Terms.** From time to time, Flock may offer certain “Special Terms” related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency’s consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**2.10 Changes to Platform.** Flock Safety may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock Safety’s products or services to its Agency s, (b) the competitive strength of, or market for, Flock Safety’s products or services, (c) such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law.

### **3. RESTRICTIONS AND RESPONSIBILITIES**

**3.1 Agency Obligations.** Upon creation of a User ID, Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person’s name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

**3.2 Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. To the extent allowed by the governing law of the state mentioned in Section 10.6, or if no state is mentioned in Section 10.6, by the law of the State of Michigan, Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses, including without limitation costs and attorneys’ fees, in connection with any claim or action that arises from an alleged violation of the foregoing, Agency’s installation obligations, or otherwise from Agency’s use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

### **4. CONFIDENTIALITY; AGENCY DATA**

**4.1 Confidentiality.** This provision is subject to any obligations under FOIA and state-specific Public Records Acts. Each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units (“**Agency Data**”). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock’s use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency’s neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a)

is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

**4.2 Agency Data. Agency and Non-Agency End User Data.** As between Flock and Agency, all right, title and interest in the Agency Data and Non-Agency End User Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and Non-Agency End User Data and perform all acts with respect to the Agency Data and Non-Agency End User Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data and Non-Agency End User Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Agency, Agency is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Agency Data and Non-Agency End User Data. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

**4.3 Feedback.** If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**4.4 Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data and Non-Agency End User Data input into the Services (the “**Aggregated Data**”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

## 5. PAYMENT OF FEES

**5.1a Wing Fees.** For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form, together the “**Initial Fees**”) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing



Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card.

**5.1b Falcon Fees.** For Falcon products, Agency will pay Flock the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form, together the “Initial Fees”) as set forth on the Order Form on or before the 30th day following receipt of invoice, after successful validation of the Units. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card.

**5.2 Changes to Fees.** Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

**5.3 Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

## **6. TERM AND TERMINATION**

**6.1a Wing Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form* (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**6.1b Falcon Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon successful installation and validation of the first installation and validation of the Unit. For Agencies who purchase ten (10) or more Units, in the event that only a portion of the Units are installed at the first installation with additional Units to be installed at a later date, Usage Fees shall be calculated on a pro rata basis corresponding to the then-installed Units. Agencies will be invoiced for the additional Units immediately upon installation of the remaining Units. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the greater of one year and the length set forth on the Order Form* (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**6.2 Termination for Convenience.** At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Falcon Camera (Flock Hardware). Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock’s own convenience, within a commercially reasonable period of time upon termination.

**6.3 Termination.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the

expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid Fees for Services not received due to such termination.

**6.5 No-Fee Term.** For the Term of this Agreement, Flock will provide Agency with complimentary access to 'hot-list' alerts, which may include 'hot tags', stolen vehicles, Amber Alerts, etc. ("**No-Fee Term**"). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

**6.6 Survival.** The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

## **7. REMEDY; WARRANTY AND DISCLAIMER**

**7.1 Remedy.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "**Defect**"), Agency must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Flock agrees to replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Agency Hardware.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Flock Hardware, Agency Hardware or Embedded Software in any manner, including operation of the Flock Hardware, Agency Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock or the Agency Hardware manufacturer; (b) damage, alteration, or modification of the Agency Hardware, Flock Hardware or Embedded Software in any way which would cause Agency Hardware, Flock Hardware or Embedded Software to malfunction; or (c) combination of the Agency Hardware or Embedded Software with software, Agency Hardware or other technology that was not expressly authorized by Flock.

**7.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**7.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF MICHIGAN.

**7.5 Insurance.** Flock and Agency will each maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of their business risk. Certificates of Insurance will be provided upon request.

**7.6 Force Majeure.** Flock Safety is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

## **8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY**

**8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF MICHIGAN.

**8.2 Additional No-Fee Term Requirements.** IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Except for Flock's willful acts, Agency agrees to pay for Flock's attorneys' fees to defend Flock for any alleged or actual claims arising out of or in any way related to the No-Fee Term.

**8.3 Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

## **9. RECORD RETENTION**

**9.1 Data Preservation.** The Agency agrees to store Agency Data and Non-Agency End User Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the

extent that Flock is required by local, state or federal law to store the Agency Data or the Non-Agency End User Data, Agency agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

## **10. MISCELLANEOUS**

**10.1 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**10.2 Assignment.** This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

**10.3 Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

**10.4 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

**10.5 Costs and Attorneys' Fees.** In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

**10.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Michigan without regard to its conflict of laws provisions. To the extent that the arbitration language below does not apply, the federal



and state courts sitting in the State of Michigan will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement. Any dispute arising out of, in connection with, or in relation to this agreement or the making of validity thereof or its interpretation or any breach thereof shall be determined and settled by arbitration in Michigan by a sole arbitrator pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The service of any notice, process, motion or other document in connection with an arbitration award under this agreement or for the enforcement of an arbitration award hereunder may be effectuated by either personal service or by certified or registered mail to the respective addresses provided herein.

**10.7 Publicity.** Pursuant to section 10.7 of the Government Agency Agreement, Flock will not use Agency's logos, trademarks, or service marks. However, Flock may state that Agency is a customer and use Agency's name on customer lists.

**10.8 Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**10.9 Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.10 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.12 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

## **EXHIBIT A**

### **Statement of Work**

Installation of Flock Camera on existing pole or Flock-supplied pole if required

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE PURCHASE OF ADDITIONAL BODY WORN  
CAMERAS FROM AXON ENTERPRISE, INC. AND TO APPROVE  
THE ATTACHED BUDGET AMENDMENT

WHEREAS:

1. On September 21, 2021, City Council adopted Resolution number 26781 authorizing the purchase of body worn cameras for all police officers from Axon Enterprise, Inc.
2. As detailed in the attached staff report, it is recommended the City Council authorize the purchase of three (3) additional body worn cameras that are needed to equip the additional police officers.
3. It is estimated the City will spend an additional \$27,061.02 for the purchase over the next nine (9) years.
4. Funds for the cameras will require approval of the attached budget amendment.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby authorize the purchase of three (3) new body worn cameras.
2. The City Council does hereby approve the attached budget amendment.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Budget Amendment

Staff Report

Contract

Resolution No. \_\_\_\_\_



## CITY OF WYOMING BUDGET AMENDMENT

**Date: December 20, 2021**

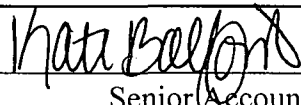
**Budget Amendment No. 048**

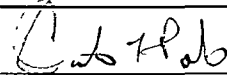
To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$4,760.00 of additional budgetary authority to provide funding for first year cost of 3 additional body worn cameras as per the attached resolution.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<b><u>General Fund</u></b>				
Police - Patrol - Capital Outlay Video Camera				
101-305-31500-980.094	124,484.00	4,760.00		129,244.00
Fund Balance/Working Capital (Fund 101)		-	4,760.00	

Recommended:

  
Senior Accountant



City Manager

Motion by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_  
that the General Appropriations Act for Fiscal Year 2021-2022 be amended by adoption of the  
foregoing budget amendment.

Motion carried: Yes \_\_\_\_\_, No \_\_\_\_\_

I hereby certify that at a \_\_\_\_\_ meeting of the Wyoming City Council duly held on  
\_\_\_\_\_ the foregoing budget amendment was approved.

\_\_\_\_\_  
City Clerk

## **STAFF REPORT**

Date: December 2, 2021

Subject: Axon Body Worn Camera

From: Captain Eric Wiler

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

It is recommended the City Council approve the purchase of three (3) body worn cameras (which includes 3 licenses and 3 storage plans) to equip the additional police officers that have been added to the department. The total purchase price of \$ 27,061.02 would be paid over nine (9) years with \$4,758.62 paid upfront for hardware. The yearly cost would be \$2,787.80 for years 2-9, which would begin in September of 2022.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

On September 21<sup>st</sup>, 2020, in resolution number 26781, City Council approved the purchase to equip every sworn police officer with body worn cameras. As noted in that staff report, equipping our police officers with body worn cameras will provide the most benefit in terms of enhancing officer and citizen safety, strengthening community trust, and maintaining a transparent and objective record of events.

### **DISCUSSION:**

Since the initial purchase of the body worn cameras, the Public Safety Department has increased the staffing level of sworn police officers. This purchase will allow for the department to meet our standard that every sworn police officer be equipped with a body camera. As with the original purchase agreement, the body worn cameras requested in this purchase will be warrantied and replaced with the newest version of camera three times throughout the term of the contract (mid-year 2, end of year 5, and mid-year 7).

### **BUDGET IMPACT:**

The total purchase price of three body worn cameras is \$27,061.02. A budget amendment is necessary and is also being presented at the Dec. 20<sup>th</sup>, 2021 meeting for approval. If approved, the necessary funds will come from the capital outlay – video camera account (101-305-31500-980.094).

#### Attachments:

Axon Quote and Contract  
Budget Amendment



**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-355703-44532.573MD

Issued: 12/02/2021



Quote Expiration: 12/31/2021

EST Contract Start Date: 04/15/2022

Account Number: 109597

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
Delivery; Invoice-2660 Burlingame Ave SW 2660 Burlingame Ave SW Wyoming, MI 49509-2332 USA	Wyoming Department of Public Safety - MI 2660 Burlingame Ave SW Wyoming, MI 49509-2332 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Mary Dunn Phone: (480) 463-2187 Email: mdunn@axon.com Fax: (480) 463-2187	Phone: (616) 530-7338 Email: steffesj@wyomingmi.gov Fax: (616) 2493403

Program Length	102 Months
TOTAL COST	\$27,061.02
ESTIMATED TOTAL W/ TAX	\$27,061.02

Bundle Savings	\$4,243.20
Additional Savings	\$0.00
TOTAL SAVINGS	\$4,243.20

PAYMENT PLAN		
PLAN NAME	INVOICE DATE	AMOUNT DUE
Year 1	Mar, 2022	\$1,403.42
Hardware + True Up	Mar, 2022	\$3,355.20
Year 2	Sep, 2022	\$2,787.80
Year 3	Sep, 2023	\$2,787.80
Year 4	Sep, 2024	\$2,787.80
Year 5	Sep, 2025	\$2,787.80
Year 6	Sep, 2026	\$2,787.80

Year 7	Sep, 2027	\$2,787.80
Year 8	Sep, 2028	\$2,787.80
Year 9	Sep, 2029	\$2,787.80

## Quote Details

Bundle Summary		
Item	Description	QTY
AB3C	AB3 Camera Bundle	3
BasicLicense	Basic License Bundle	3
DynamicBundle	Dynamic Bundle	3
BWCamTAP10Yr	Body Worn Camera TAP 10 Year Bundle	3
DynamicBundle	Dynamic Bundle	1

Bundle: AB3 Camera Bundle    Quantity: 3    Start: 4/15/2022    End: 10/14/2030    Total: 2097 USD			
Category	Item	Description	QTY
Camera	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	3
Camera Mount	74020	MAGNET MOUNT, FLEXIBLE, AXON RAPIDLOCK	4
USB	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	4

Bundle: Basic License Bundle    Quantity: 3    Start: 4/15/2022    End: 10/14/2030    Total: 4746.06 USD			
Category	Item	Description	QTY
E.com License	73840	EVIDENCE.COM BASIC LICENSE	3
A La Carte Storage	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	3

Bundle: Dynamic Bundle    Quantity: 3    Start: 4/15/2022    End: 10/14/2030    Total: 10098 USD			
Category	Item	Description	QTY
Other	73682	AUTO TAGGING LICENSE	3
Other	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	3

Bundle: Body Worn Camera TAP 10 Year Bundle    Quantity: 3    Start: 4/15/2022    End: 10/14/2030    Total: 8861.76 USD			
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Category	Item	Description	QTY
Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	3
Camera Refresh 1	73309	AXON CAMERA REFRESH ONE	3
Camera Refresh 2	73310	AXON CAMERA REFRESH TWO	3
Camera Refresh 3	73345	AXON CAMERA REFRESH THREE	3
Camera Refresh 4	73346	AXON CAMERA REFRESH FOUR	3

**Bundle: Dynamic Bundle    Quantity: 1    Start: 10/15/2020    End: 4/14/2022    Total: 1258.2 USD**

Category	Item	Description	QTY
Other	73352	BWC HARDWARE FINANCING TRUE UP PAYMENT	3

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

# Standard Terms and Conditions

## Axon Enterprise Inc. Sales Terms and Conditions

### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

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Signature

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Date Signed

12/2/2021

RESOLUTION NO. \_\_\_\_\_

RESOLUTION FOR AWARD OF BIDS AND TO  
AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACTS

WHEREAS:

1. Formal bids have been obtained on the below listed items.
2. The bids received have been reviewed and evaluated as per the attached staff reports.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby award the bid for the listed items as recommended in the attached staff report and summarized below.

Item	Recommended Bidder	Cost
Median & Miscellaneous Landscape Maintenance	Heyboer Landscape Maintenance, Inc. and Pro-Mow Lawn Care L.L.C.	Bid prices as shown on the attached tabulation sheet.
Janitorial Services	Professional Building Services	Bid prices as shown on the attached tabulation sheet.

2. The City Council does hereby authorize the Mayor and City Clerk to execute the contracts.

Moved by Councilmember:  
Seconded by Councilmember:  
Motion Carried        Yes  
                                  No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 20, 2021.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:  
Staff Reports  
Tabulation Sheet  
Contracts

Resolution No. \_\_\_\_\_

## **STAFF REPORT**

Date: December 2, 2021

Subject: Bid Award – Median and Miscellaneous Landscape Maintenance (2022 – 2024)

From: Jodie Theis, Public Services Supervisor

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

The Public Works Department recommends that the City Council authorizes the only bidder for Zones 1 & 2, Pro-Mow Lawn Care, LLC, and the low bidder for Zone 3, Heyboer Landscape Maintenance Inc., to perform the median and miscellaneous landscape maintenance for calendar years 2022, 2023, and 2024 at the pricing as shown on the attached bid tabulations. It is also recommended that the City Council authorize the Mayor and City Clerk to execute the contracts.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

The Public Works Department provides lawn care maintenance for all medians, 142 cul-de-sacs, and other miscellaneous parcels throughout the City. This maintenance includes mowing, fertilization, and weed control of grass medians and the mowing of the cul-de-sacs and miscellaneous parcels. Weed control is also provided for the concrete medians and concrete curb lines throughout the City. Maintaining the City's property is an important function in sustaining the City's aesthetics and safety and has a positive impact on property values.

### **DISCUSSION:**

Invitations to bid for Median and Miscellaneous Landscape Maintenance were sent to thirty-four bidders and bid specifications were picked up by two pre-qualified bidders. On November 16, 2021, the City received two bids. Pro-Mow Lawn Care and Landscape was the only bidder for Zones 1 and 2. Heyboer Landscape Maintenance submitted the low bid for Zone 3.

The City also asked for bids to maintain the Public Works and Fire Station properties. However, due to the bid results for these properties, it is more cost effective to have internal Facilities Division staff maintain these properties. Therefore, these bid items are not recommended for award with this bid.

The cost of median and miscellaneous landscape maintenance is anticipated to be approximately \$213,000 for work performed during calendar year 2022, which is approximately the same cost as calendar year 2021.

### **BUDGET IMPACT:**

Sufficient funds are available in the Major Street and Local Street Maintenance Accounts: 202-441-46300-930.000 and 203-441-46300-930.000.

### **ATTACHMENTS:**

Bid Tabulations



# TABULATION OF BIDS

ON MEDIAN & MISCELLANEOUS LANDSCAPE MAINTENANCE (2022-2024) - BID # 2021

Opened By The City Clerk On November 16, 2021 At 11:00 a.m.

Zone/Year		Unit	Heyboer Landscape Maintenance	Pro-Mow Lawn Care & Landscaping
ZONE #1	2022	LUMP SUM	No Bid	\$ 70,000.00
	2023	LUMP SUM	No Bid	\$ 73,500.00
	2024	LUMP SUM	No Bid	\$ 77,000.00

ZONE #2	2022	LUMP SUM	No Bid	\$ 85,000.00
	2023	LUMP SUM	No Bid	\$ 88,000.00
	2024	LUMP SUM	No Bid	\$ 91,000.00

ZONE #3	2022	LUMP SUM	\$ 57,077.00	\$ 90,000.00
	2023	LUMP SUM	\$ 57,077.00	\$ 93,000.00
	2024	LUMP SUM	\$ 57,077.00	\$ 95,000.00

PUBLIC WORKS PROPERTY	2022	LUMP SUM	No Bid	\$ 15,000.00
	2023	LUMP SUM	No Bid	\$ 15,500.00
	2024	LUMP SUM	No Bid	\$ 16,000.00

FIRE STATION PROPERTIES	2022	LUMP SUM	No Bid	\$ 38,000.00
	2023	LUMP SUM	No Bid	\$ 40,000.00
	2024	LUMP SUM	No Bid	\$ 42,000.00

Additional Miscellaneous Locations:

Mowing	PER .10 ACRE PER MONTH	\$ 28.00	\$ 65.00
Broadleaf Weed Control	PER .10 ACRE PER APPLICATION	\$ 22.00	\$ 55.00
Fertilization	PER .10 ACRE PER APPLICATION	\$ 10.00	\$ 60.00
Weed Control in Concrete Areas	PER .10 ACRE PER APPLICATION	\$ 28.00	\$ 70.00

Maximum # of Zones to Maintain	1	5
Order of Preference	Z3	Z1, Z2, PW, FIRE, Z3

## CONTRACT FORM

This Contract Form must be signed by the Bidder and provided as part of the Bid submittal. If the Bidder is selected, the Contract is approved by the City Council, the City receives all bonds, insurance and other required documents, the City Mayor, Clerk and Attorney will sign this contract form. A copy will be provided to the Contractor.

### City Standard Contract for Median & Miscellaneous Landscape Maintenance (2022 - 2024)

This Contract is made as of the Effective Date between the City and the Contractor.

"Contract Documents" means the bid together with the invitation to bid, bid specifications, city standard terms and conditions, plans, instructions to bidders, bid form, any prequalification submittals filed by the bidder, and other documents comprising of or required in the bid package, City Council resolution, insurance, and any required bonds.

"City" means the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, Wyoming, MI 49509.

"Contractor" means:

Heuboe Landscape Maintenance, Inc.

LEGAL NAME OF COMPANY

BUSINESS NAME / D.B.A., IF DIFFERENT FROM ABOVE

Corporation, MI

FORM OF BUSINESS and STATE IN WHICH FORMED – e.g. partnership, corporation, limited liability company, professional corporation and the state in which it was formed

4735 8th St.

STREET ADDRESS

Caledonia, MI 49316

CITY

STATE

ZIP CODE

"Effective Date" means the day after the date the Contract is approved by the City Council and the City receives all bonds, insurance documents, and other documents required from Contractor.

### Terms and Conditions

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Contractor will provide the materials and services in accordance with the Bid Documents.
2. City will pay the Contractor in accordance with the Bid Documents.
3. Waived or modified specifications are as follows:

No payment bond is required. No performance bond or other form of performance assurance is required.

4. This is the only agreement between the parties regarding its subject matter. There are no other agreements, representations or warranties. **No terms and conditions apply other than those expressly and fully stated in the Contract Documents.** This contract can be amended only in writing signed by both City and Contractor.

City and Contractor have signed this Contract as of the Effective Date.

**City of Wyoming**

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: \_\_\_\_\_

**Contractor**

By: \_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Printed Name of Bidder

\_\_\_\_\_  
Title

Date signed: \_\_\_\_\_ 11/15/21

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney

## CONTRACT FORM

This Contract Form must be signed by the Bidder and provided as part of the Bid submittal. If the Bidder is selected, the Contract is approved by the City Council, the City receives all bonds, insurance and other required documents, the City Mayor, Clerk and Attorney will sign this contract form. A copy will be provided to the Contractor.

### City Standard Contract for Median & Miscellaneous Landscape Maintenance (2022 - 2024)

This Contract is made as of the Effective Date between the City and the Contractor.

"Contract Documents" means the bid together with the invitation to bid, bid specifications, city standard terms and conditions, plans, instructions to bidders, bid form, any prequalification submittals filed by the bidder, and other documents comprising of or required in the bid package, City Council resolution, insurance, and any required bonds.

"City" means the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, Wyoming, MI 49509.

"Contractor" means:

Pro-Mow Lawn Care LLC  
LEGAL NAME OF COMPANY

\_\_\_\_\_  
BUSINESS NAME / D.B.A., IF DIFFERENT FROM ABOVE

LLC Michigan

\_\_\_\_\_  
FORM OF BUSINESS and STATE IN WHICH FORMED — e.g. partnership, corporation, limited liability company, professional corporation and the state in which it was formed

2500 100<sup>th</sup> St. SW  
STREET ADDRESS

Byron Center  
CITY

MI  
STATE

49315  
ZIP CODE

"Effective Date" means the day after the date the Contract is approved by the City Council and the City receives all bonds, insurance documents, and other documents required from Contractor.

### Terms and Conditions

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Contractor will provide the materials and services in accordance with the Bid Documents.
2. City will pay the Contractor in accordance with the Bid Documents.
3. Waived or modified specifications are as follows:

No payment bond is required. No performance bond or other form of performance assurance is required.

4. This is the only agreement between the parties regarding its subject matter. There are no other agreements, representations or warranties. **No terms and conditions apply other than those expressly and fully stated in the Contract Documents.** This contract can be amended only in writing signed by both City and Contractor.

City and Contractor have signed this Contract as of the Effective Date.

City of Wyoming

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: \_\_\_\_\_

Contractor

By: \_\_\_\_\_  
Signature of Bidder

Matthew Bainbach  
Printed Name of Bidder

owner  
Title

Date signed: 11/11/2021

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney



## **STAFF REPORT**

Date: December 13, 2021

Subject: Bid Award - Janitorial Services

From: Troy Rinks, Facilities Foreman

Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

It is recommended that the City Council award the janitorial services bid to Professional Building Services from January 1, 2022 through December 31, 2024 for janitorial services at the 62A District Court, City Hall, Public Works, Library, Public Safety and Wyoming Senior Center buildings. It is also recommended that the City Council authorize the Mayor and City Clerk to execute the contract.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Maintaining the cleanliness of city facilities is critical in creating safe and productive spaces for guests, citizens, staff, and for allowing the City Council to conduct essential business. Further, proper maintenance of City facilities extends the life cycle of the City's assets.

### **DISCUSSION:**

A pre-bid meeting and a walk-through of each building was held on October 4, 2021, with five qualified contractors in attendance. Twenty-one bidders downloaded the specifications from the city's e-bidder website. On October 19, 2021, four bids were received from qualified contractors. Only three bids had pricing for every building. The bid tabulation follows this report; however, a summary of these results is included below.

Professional Building Services - \$198,913.05 per year for three years (no escalation)

West Michigan Janitorial - \$236,400.00 – year 1  
\$250,605.00 – year 2  
\$260,610.00 – year 3

United Commercial Services - \$326,409.00 per year for three years (no escalation)

A team of representatives from each building interviewed the low bidder (Professional Building Services) on November 15, 2021 to discuss their vision and to ensure that they could provide excellent quality of work at City facilities. Reference calls were also made to area municipalities that currently use Professional Building Services as their cleaning contractor.

Upon review of the bid documents received, reference checks, and the inter-departmental panel interview, Professional Building Services was found to meet the necessary bid specifications. Therefore, it is recommended the City Council approve the bid from Professional Building Services for \$198,913.05 per year for a contract term of three years. The amount is approximately the same amount the City has been paying for this work for the 2021 calendar year.

**BUDGET IMPACT:**

Sufficient funds have been budgeted in various departmental accounts:

<b>Building</b>	<b>Account</b>
62A District Court	101-136-13610-930.000
Public Library	401-267-26700-930.000
City Hall	101-267-26700-930.000
Senior Center	208-752-75800-930.000
Public Works	661-441-58300-930.000
Public Safety	101-305-30610-930.000

**ATTACHMENT:**

Bid Tabulation

Contract

[illegible]

## JANITORIAL SERVICES CONTRACT

This Contract is made as of the Effective Date between the City of Wyoming, a Michigan municipal corporation, of 1155 28<sup>th</sup> Street SW, PO Box 905, Wyoming, MI 49509-0905 ("City") and the Contractor identified below.

### Recitals

City requested bids/proposals for the Janitorial Services contract (the "Request for Bids/Proposals" that included the bid/proposal requirements, city contract standard terms and conditions, risk allocation and insurance provisions, bonds and lien provisions, specific requirements, bid/proposal form, plans, and project or technical bid specifications) and Contractor submitted the bid/proposal by the required date of October 19, 2021 and related required materials (the "Bid") that was selected by City

"Contract Documents" means this contract, the Bid, the Request for Bids/Proposals including all materials that are part of it, the approving City Council resolution, insurance information meeting contract requirements (including any requested policies, endorsements and certificates), and any required bonds.

"Contractor" means:

Professional Building Services LLC  
LEGAL NAME OF COMPANY

LLC Michigan  
BUSINESS NAME / D.B.A., IF DIFFERENT FROM ABOVE

1540 HENDRICK Rd  
FORM OF BUSINESS and STATE IN WHICH FORMED - e.g., partnership, corporation, limited liability company, or professional corporation and the state in which it was formed

Norton Shores MI 49441  
STREET ADDRESS CITY STATE ZIP CODE

"Effective Date" means the day after the date that (i) the Contract is approved by the City Council and (ii) the City receives all bonds, insurance documents, and other documents required from Contractor.

### Terms and Conditions

In exchange for the consideration in and referred by this Contract, the parties agree:

1. Contractor will provide the materials and services in accordance with the Contract Documents.
2. City will pay the Contractor in accordance with the Contract Documents.
3. This is the only agreement between the parties regarding its subject matter. There are no other agreements, representations or warranties. **No terms and conditions apply other than those expressly and fully stated in the Contract Documents.** This contract can be amended only in writing signed by both City and Contractor.

City and Contractor have signed this Contract as of the Effective Date.

City of Wyoming

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

Date signed: \_\_\_\_\_

Approved as to form:

Scott G. Smith  
Scott G. Smith, City Attorney

Contractor

By: \_\_\_\_\_  
Signature for Contractor

AARON PANEK - V.P. OPERATIONS  
Printed Name & Title of Person Signing

Date signed: 11-30-21

12/20/21  
City Atty

ORDINANCE NO. 2-22

ORDINANCE TO AMEND THE CODE OF ORDINANCES BY ADDING CHAPTER 68, ENTITLED "STORMWATER," TO REGULATE AND CONTROL STORMWATER RUNOFF AND DISCHARGES, PROTECT FLOODWAYS, CONTROL SOIL EROSION, PROTECT DRAINS, PROVIDE FOR INSPECTION AND MONITORING OF STORMWATER AND OTHER DISCHARGES, ESTABLISH STORMWATER DESIGN AND PERFORMANCE STANDARDS, AND PROVIDE PENALTIES FOR VIOLATIONS; AND BY REPEALING ARTICLES IV AND V OF CHAPTER 86 ENTITLED "STORMWATER" AND "STORMWATER DISCHARGES"

THE CITY OF WYOMING ORDAINS:

Section 1. That the Code of Ordinances, City of Wyoming, Michigan, is amended by adding Chapter 68 entitled "Stormwater" to read as stated in Exhibit A which is incorporated in its entirety by reference.

Section 2. That Article IV entitled, "Stormwater" and Article V entitled "Stormwater Discharges" of Chapter 86 of the Code of Ordinances, City of Wyoming, Michigan, are repealed.

Section 3. That this ordinance shall take effect on \_\_\_\_\_, 2022.

Section 4. That MuniCode shall incorporate this ordinance into the Code of Ordinances, City of Wyoming, Michigan in exactly the format provided without changing any section numbering or other provisions.

I certify that this ordinance was adopted by the City of Wyoming at a regular session of the City Council held on \_\_\_\_\_, 2022.

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Kelli A. VandenBerg  
Wyoming City Clerk

Ordinance No. 2-22



## **Exhibit A**

### **CHAPTER 68 - STORMWATER**

#### **ARTICLE I – GENERAL**

##### **Sec. 68-11. – Statutory Authority and Title.**

- (1) This ordinance is pursuant to the home rule city act, 1909 PA 279, MCL 117.1 *et seq.*; the drain code of 1956, 1956 PA 40, MCL 280.1 *et seq.*; the land division act, 1967 PA 288, MCL 560.1 *et seq.*; the revenue bond act of 1933, MCL 141.101 *et seq.*; the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 *et seq.*; 33 USC 1342(p); 40 CFR Parts 9, 122, 123 and 124; the City Charter, and other applicable state and federal laws, rules and regulations.
- (2) This ordinance shall be known and may be cited as the “stormwater ordinance.”

##### **Sec. 68-12. – Findings.**

The city finds that:

- (a) Water bodies, roadways, structures, and other property within, and downstream of the city are sometimes subjected to flooding.
- (b) Flooding endangers the lives and property of the public and natural resources of the city and the region.
- (c) Land development alters the hydrologic response of watersheds, resulting in increased stormwater runoff rates and volumes, increased flooding, increased stream channel erosion, and increased sediment transport and deposition.
- (d) Stormwater runoff produced by land development contributes to increased quantities of water-borne pollutants.
- (e) Increases of stormwater runoff, soil erosion, and non-point sources pollution have occurred as a result of land development, and cause deterioration of the water resources of the City and downstream municipalities.
- (f) Stormwater runoff, soil erosion, and non-point source pollution, due to land development within the city, have resulted in a deterioration of the water resources of the city and downstream municipalities.
- (g) Increased stormwater runoff rates and volumes, and the sediments and pollutants associated with stormwater runoff from future development projects within the city will, absent reasonable regulation and control, adversely affect water bodies and water resources in the city and downstream municipalities.
- (h) Stormwater runoff, soil erosion, and non-point source pollution can be controlled and minimized by the regulation of stormwater runoff from development.
- (i) Post-construction stormwater runoff requirements for new development and for redevelopment within the city are established and may be modified by EGLE under the NPDES program.
- (j) Adopting and implementing the standards, criteria and procedures in this chapter will address many deleterious effects of stormwater runoff.
- (k) Adopting the standards in this chapter will preserve or enhance the public health, safety, and welfare.
- (l) Adopting these standards is necessary to comply with the NPDES MS4 permit.
- (m) Illicit discharges contain pollutants that will significantly degrade the city’s water bodies and water resources.
- (n) Illicit discharges enter the city’s MS4 through either direct connections (*e.g.* sanitary sewer laterals mistakenly or deliberately connected to the storm sewers) or indirect connections (*e.g.* infiltration, or spills conveyed by surface flow into the storm sewer system).
- (o) Establishing and implementing measures for controlling illicit discharges and connections will address many of their deleterious effects.

##### **Sec. 68-13. – Purpose.**

It is the purpose of this chapter to establish minimum stormwater management requirements and controls to accomplish, among others, the following objectives:

- (a) To reduce artificially induced flood damage;
- (b) To minimize increased stormwater runoff rates and volumes from identified new land development;
- (c) To minimize the deterioration of existing watercourses, culverts and bridges, and other structures;
- (d) To encourage water recharge into the ground where geologically favorable conditions exist;
- (e) To prevent an increase in non-point source pollution;

- (f) To maintain the integrity of stream channels for their biological functions, as well as for drainage and other purposes;
- (g) To minimize the impact of development upon stream bank and streambed stability;
- (h) To reduce erosion from development or construction projects;
- (i) To preserve and protect water supply facilities and water resources by means of controlling increased flood discharges, stream erosion, and runoff pollution;
- (j) To reduce stormwater runoff rates and volumes, soil erosion, and non-point source pollution, wherever practicable, from lands that were developed without stormwater management controls meeting the purposes and standards of this chapter;
- (k) To reduce the adverse impact of changing land use on water bodies by, among other measures, establishing minimum standards to protect water bodies from degradation resulting from changing land use where there are insufficient stormwater management controls;
- (l) To regulate the contribution of pollutants to the MS4 from stormwater discharges;
- (m) To prohibit illicit discharges and connections to the MS4; and,
- (n) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this chapter.

**Sec. 68-14. – Applicability, Exemptions and General Provisions.**

- (1) This chapter applies to all new development and all redevelopment projects, including private, commercial and public projects that disturb 1 acre or more, and projects of less than 1 acre that are part of a larger common plan of development or sale that would disturb 1 acre or more.
- (2) This chapter does not apply to the following:
  - (a) Installation or removal of individual mobile homes within a mobile home park. However, construction, expansion, or modification of a mobile home park are subject to this chapter.
  - (b) Construction of, or an addition, extension or modification to, an individual single-family or a two-family detached dwelling.
  - (c) Farm operations and buildings, except dwellings, directly related to farm operations. However, greenhouses and similar structures are subject to this chapter.
  - (d) Plats with preliminary plat approval and other developments with final land use approvals prior to the effective date of this chapter while such approvals remain in effect.

**Sect. 68-15. – Definitions.**

The following definitions apply to this chapter unless the context specifically indicates otherwise:

- (a) *Base flood* means a flood having a 1 percent or less chance of being equaled or exceeded in any given year.
- (b) *Base flood elevation* means the high-water elevation of the base flood, commonly referred to as the “100-year flood elevation.”
- (c) *Base flood plain* means the area inundated by the base flood.
- (d) *Best management practices* or *BMPs* means practices, or combination of practices and design criteria, that accomplish the purposes of this chapter (including, but not limited to reducing stormwater runoff rates, reducing stormwater runoff volume, and reducing amounts of pollutants in stormwater) as determined by city and, where appropriate, the standards of the Kent County Drain Commissioner.
- (e) *Building opening* means any opening of a solid wall, such as a window or door, through which floodwaters could penetrate.
- (f) *Clean Water Act* means the Federal Water Pollution Control Act, 33 USC 1251 *et seq.*, and regulations promulgated under it.
- (g) *Construction site stormwater runoff* means stormwater runoff from a development site following an earth change and before final site stabilization.
- (h) *County* means Kent County, Michigan.
- (i) *Detention* means a system or facilities designed to capture stormwater and release it over a given period of time through an outlet structure at a controlled rate.
- (j) *Developer* means a person proposing or implementing development.
- (k) *Development* means installation or construction of buildings, structures or other impervious surfaces on a site that disturbs 1 acre of land or more and includes projects of less than 1 acre that are part of a larger common plan or sale that would disturb 1 acre or more. A development may include a land division, plat, site condominium, planned unit development, mobile home park, private road, or other special land use requiring land use or other review and approval by the city.

- (l) *Development site* means land that is being or has been developed, or that a developer proposes for development.
- (m) *Discharger* means a person who directly or indirectly discharges stormwater from any property.
- (n) *Drain* means a drain as defined in the Drain Code.
- (o) *Drainage* means collection or conveyance of stormwater, ground water, and/or surface water.
- (p) *Drainageway* means the area within which surface water or ground water is conveyed from one part of a lot or parcel to another part of the lot or parcel or to adjacent land or to a watercourse.
- (q) *Drain Code* means the drain code of 1956, 1956 PA 40, MCL 280.1 *et seq.*
- (r) *Earth change* means human activity removing ground cover, changing the slope or contours of land, or exposing the soil surface to the actions of wind and rain. Earth change includes, but is not limited to, any excavating, surface grading, filling, landscaping, or removal of vegetative roots.
- (s) *EGLE* means the Michigan Department of Environment, Great Lakes and Energy and any successor agency.
- (t) *EPA* means the United States Environmental Protection Agency and any successor agency.
- (u) *Erosion* means the process by which the ground surface is worn away by action of wind, water, gravity or a combination of any of those forces.
- (v) *FEMA* means the United States Emergency Management Agency or any successor agency.
- (w) *Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of water bodies or the unusual and rapid accumulation of surface water runoff from any source.
- (x) *Flood-proofing* means structural and/or non-structural additions, changes, or adjustments to structures or property that reduce or eliminate flood damage to land, improvements, utilities, or structures.
- (y) *Flood protection elevation or FPE* means the base flood elevation plus 1-foot at any given location.
- (z) *Floodway* means the channel of a river or stream and the portions of the floodplain adjoining the channel that are reasonably required to carry and discharge a 100-year flood.
- (aa) *Grading* means any stripping, excavating, filling, and/or stockpiling of soil, and the land in its excavated or filled condition.
- (bb) *Groundwater* means water below the land surface in the zone of saturation as defined by NREPA.
- (cc) *Hazardous material* means any material, substance, chemical, waste or combination thereof, which because of its quantity, concentration or physical, chemical, or infectious characteristics may cause, or contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (dd) *High groundwater* means groundwater elevation which does not meet minimum distance from the bottom of proposed practice as defined in the Stormwater Standards Manual.
- (ee) *Illicit connection* means a method or means for conveying an illicit discharge into water bodies or the city's stormwater system
- (ff) *Illicit discharge* means a discharge to water bodies or stormwater systems that does not consist entirely of stormwater, discharges pursuant to the terms of an NPDES permit, or exempted discharges as defined in this ordinance, or which otherwise does not comply with this chapter.
- (gg) *Impervious surface* means a surface that does not allow stormwater to percolate into the ground
- (hh) *Local floodplain* means a land area subject to periodic flooding as determined by the city.
- (ii) *Lowest floor* means the lowest floor or the lowest enclosed area (including a basement) of a building, but not including an unfinished or flood-resistant enclosure usable solely for vehicle parking or building access.
- (jj) *MDNR* means the Michigan Department of Natural Resources and any successor agency.
- (kk) *MS4* means "Municipal Separate Storm Sewer System" which is a system of drainage (including roads, storm drains, pipes, ditches, etc.) that is not a combined sewer or part of a sanitary sewage treatment plant. During wet weather, pollutants are transported through MS4s to local water bodies.
- (ll) *MS4 permit* means a stormwater permit under issued by EGLE under the Clean Water Act and NREPA.
- (mm) *NPDES* means National Pollution Discharge Elimination System, a federal program protecting waters of the state by assuring that discharges of wastewater comply with state and federal regulations and requiring persons discharging or proposing to discharge wastewater to waters of the state to obtain a NPDES permit prior to a discharge.
- (nn) *NREPA* means the Natural Resources and Environmental Protections Act, 1994 PA 451, MCL 324.101 *et seq.*, and any rules or other binding agency requirements promulgated or issued pursuant thereto.
- (oo) *Overland flow-way* means a surface area that conveys a concentrated flow of stormwater runoff.

- (pp) *Person* means an individual, partnership, association, for-profit or non-profit corporation, ecclesiastical corporation, limited liability company, limited partnership, trust, estate, governmental entity, public body corporate, or any other recognized legal entity.
- (qq) *Plan* means written narratives, specifications, drawings, sketches, written standards, operating procedures, or any combination of them.
- (rr) *Pollutant* means a substance in a discharge including, but is not limited to: dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act.
- (ss) *Project site* means an area of earth change.
- (tt) *Property owner* means any person having legal or equitable title to property or any person having or exercising care, custody, or control over any property.
- (uu) *Retention* means a system designed to capture stormwater and contain it until it infiltrates the soil or evaporates.
- (vv) *Riparian property owner* means a property owner whose land is adjacent to a waterbody.
- (ww) *Sewershed* means the area where stormwater is conveyed by a MS4 to a common outfall or point of discharge, normally a catchment defined by storm drain infrastructure emptying into a common outlet.
- (xx) *Soil erosion* means stripping of soil and weather rock from land creating sediment for transportation by water, wind, or ice, and enabling formation of new sedimentary deposits.
- (yy) *State Water Quality Standards* means applicable Michigan laws, rules and regulations pertaining to water quality, including the provisions of NREPA §3106, MCL 324.3106.
- (zz) *State-regulated floodplain* means an area of land adjoining a river or stream that will be inundated by a base flood that has a drainage area of 2 square miles or more when measured at the downstream limits of a proposed development site.
- (aaa) *Storm drain* means a system of open or enclosed conduits and appurtenant structures intended to convey or manage stormwater runoff, groundwater, and drainage.
- (bbb) *Stormwater runoff* means water originating during precipitation events or with snowmelt that does not soak into the ground or evaporates and either flows directly into surface waters or is channeled into storm drainage systems.
- (ccc) *Stormwater management facility* means a method, structure, area, system, plantings, trees, or other equipment or measures designed to receive, control, store, convey, infiltrate, or treat stormwater.
- (ddd) *Stormwater Standards Manual* means the Stormwater Standards Manual: Procedures & Design Criteria for Stormwater Management, prepared by Fishbeck, Inc., in collaboration with the Grand Valley Metropolitan Council, revised 03.26.2021, and any subsequent revision.
- (eee) *Stream* means a river, stream, or creek which may or may not serve as a drain, or any other water body that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.
- (fff) *Substantial improvement* means a repair, reconstruction, or improvement of an existing structure, such that the cost equals or exceeds 50% of the true cash value of the structure at any of the following times:
  - (i) Before the improvement is started, or
  - (ii) Before the damage occurred if the structure has been damaged and is being restored.
 A substantial improvement is started when the first work on any structural part of the building begins.
- (ggg) *TSS* means total suspended solids, i.e., the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids.
- (hhh) *Uncontaminated pumped groundwater* means groundwater pumped from dewatering wells at sites where no known soil or groundwater contamination exists.
- (iii) *Wastewater* means discharged water or other liquid other than uncontaminated stormwater.
- (jjj) *Water body or body of water* means a river, lake, stream, creek or other watercourse or wetlands.
- (kkk) *Watershed* means a land area draining into a water body.
- (lll) *Wetlands* means land characterized by the presence of water at a frequency and duration sufficient to support wetland vegetation and aquatic life.

**Sec. 68-16. – Interpretation.**

Words and phrases in this chapter not defined in section 68-15 shall be construed according to their common and accepted meanings. Technical words and technical phrases that are not defined in section 68-15, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

## **ARTICLE II – STORMWATER APPROVAL**

### **Sec. 68-21. – Approval Required.**

- (1) No person shall begin or engage in any development without first obtaining a stormwater review and approval under this article.
- (2) Stormwater approval authorizes only the discharge of stormwater from the development for which the approval is granted in accordance with the approved site plan, parking lot plan, or plat and any terms and conditions. It does not apply to other development or other land use activities and does not replace any other required permits or approvals.

### **Sec. 68-22. – Stormwater Approval Review Procedures.**

The city will grant stormwater approval, which may impose terms and conditions in accordance with Section 68-29, only upon compliance with all the following:

- (a) The developer has submitted a site (drainage) plan complying with section 68-23.
- (b) The developer has paid all costs associated with that review and approval pursuant to section 68-24.
- (c) The developer has provided any required performance guarantee under section 68-26.
- (d) The developer has provided or agreed (in a form accepted by the city attorney) to provide all easements necessary to implement the approved drainage plan and otherwise comply with this chapter including, but not limited to, section 68-72. All easements shall be in a recordable form and must be submitted before an occupancy permit is issued.
- (e) The developer provides any required maintenance agreement for routine, emergency, and long-term maintenance of all structural and vegetative BMPs installed and implemented to meet the performance standards, and to comply with the approved drainage plan and this chapter including, but not limited to, section 68-73. The maintenance agreement must be in a form and substance acceptable to the city attorney, may not be amended without approval of the city engineer and city attorney, must run with the land and be binding on future property owners, and must be recorded with the County Register of Deeds.

### **Sec. 68-23. – Drainage Plan.**

- (1) The developer must provide adequate stormwater management facilities for the Development site. Adequate facilities reduce the exposure of people to drainage-related adverse impacts and to health and safety hazards. They reduce the exposure of real and personal property to damage through stormwater inundation. The stormwater management system and stormwater best management practices (BMPs) shall be designed in accordance with the latest version of the Stormwater Standards Manual.
- (2) The developer must provide a drainage plan to the city engineer for the city's engineer's review and approval. The drainage plan shall identify and contain all the information required in the "Stormwater Standards" manual, including an implementation plan relative to the development site.
- (3) The implementation plan for construction and inspection of all stormwater management facilities necessary to the overall drainage plan shall include a schedule of the estimated dates of completing construction of the stormwater management facilities shown on the plan and an identification of the proposed inspection procedures to ensure that the stormwater management facilities are constructed in accordance with the approved drainage plan.

### **Sec. 68-24. – Stormwater Plan Review Costs.**

All expenses and costs the city incurs directly associated with processing, reviewing, and approving or denying stormwater plan reviews and approvals shall be paid to the city before site plan or other approvals are given. In addition, no occupancy permit will be issued until those costs are paid. Such reimbursable expenses include, but are not limited to the following:

- (a) Services of any attorney the city engages directly related to the application.
- (b) Services of any engineer the city engages directly related to the application.
- (c) Services of other independent contractors or consultants the city engages directly related to the application.



- (d) Any additional public hearings, required mailings, and legal notice requirements necessitated by the application.

**Sec. 68-25. – Construction Site Runoff Controls.**

Prior to making any earth change on a development site regulated by this chapter, the developer shall first obtain any required soil erosion permit issued in accordance with NREPA Part 91. The developer shall install stormwater management facilities and shall phase the development activities to prevent construction site stormwater runoff and off-site sedimentation. During all construction activities on the development site, the city may inspect the development site to ensure compliance with the approved construction site runoff controls

**Sec. 68-26. – Performance Guarantee.**

- (1) The city may require a stormwater performance guarantee such as an irrevocable standby letter of credit or other performance guarantee in a substance, form, and amount satisfactory to the city attorney and city engineer to ensure the timely and satisfactory construction of all approved stormwater management facilities and to complete site grading in accordance with the approved drainage plan. Upon (i) certification by a registered professional engineer that the stormwater management facilities have been completed in accordance with the approved drainage plan including, but not limited to, the implementation plan required to be submitted in section 68-23, and (ii) receipt of by the city engineer of construction record drawings meeting the city engineer requirements, the city may release or partially release the letter of credit or other performance guarantee subject to final city acceptance and approval.
- (2) Except as provided in subsection (3), the amount of the performance guarantee shall be in an amount the city engineer or city manager reasonably determines is appropriate. The city engineer shall consider the development size and type, the on-site stormwater system size and type, and the nature of the off-site stormwater management facilities the development will utilize.
- (3) The city manager, after consulting with the city engineer, may reduce or waive the amount of the performance guarantee for a development that will not increase the percentage of impervious surface of the development site by more than 10% in accordance with the factors in subsection (2).
- (4) This does not relieve a developer of its obligation to pay costs associated with on-site private stormwater management facilities as well as costs arising from other drainage improvements needed to reduce a development's impact on a drain consistent with adopted design standards.

**Sec. 68-7. – Certificate of Occupancy.**

No final certificate of occupancy will be issued to a development until stormwater management facilities have been completed in accordance with the approved drainage plan. However, the city may issue a certificate of occupancy if an acceptable letter of credit or other performance guarantee has been submitted to the city, for the timely and satisfactory construction of all stormwater management facilities and site grading in accordance with the approved drainage plan.

**Sec. 68-28. - No Change in Approved Facilities.**

After construction and approval, stormwater management facilities must be maintained in good operational condition, in accordance with the approved drainage plan, and must not be altered, revised or replaced except in accordance with the approved drainage plan, or in accordance with approved amendments or revisions to that plan.

**Sec. 68-29 – Terms and Conditions of Approvals.**

The city may impose stormwater plans and disposal terms and conditions as reasonably necessary to effectuate the purposes of this chapter. The developer must comply with such terms and conditions.

**ARTICLE III – STORMWATER SYSTEM, FLOODPLAIN AND OTHER STANDARDS, SOIL EROSION CONTROL**

**Sec. 68-31. – Management of and Responsibility for Stormwater System.**

The city is not obligated to provide or responsible for providing drainage facilities on private property for the management of its stormwater. The property owner has the responsibility to provide and maintain private stormwater management facilities serving the property and to prevent or correct accumulation of debris that interferes with the drainage function of a water body or the functioning of such drainage.

**Sec. 68-32 – Stormwater System.**

All stormwater management facilities must be constructed and maintained in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations and with any permit terms and conditions.

**Sec. 68-33. – Stormwater Discharge Rates and Volumes.**

The city's minimum design standards as provided in Article VIII of this chapter apply to all new development and redevelopment projects, including preventing or minimizing water quality impacts. Specific exemptions are listed in the Stormwater Standards Manual.

**Sec. 68-34. – Floodplain Standards.**

- (1) All new buildings and substantial improvements to existing buildings must be protected from flood damage up to the FPE in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. Floodway alteration in a local floodplain will be permitted only upon the city engineer's review and approval in accordance with an approved drainage plan.
- (2) A drainage plan providing for the filling or alteration of a floodway within a local floodplain must include provisions for maintaining stability of banks of streams or other water bodies. Establishing buffer zones is one means of providing protection of the slopes and banks or water bodies.
- (3) Within a required buffer zone, no earth change shall take place except in accordance with the approved drainage plan. Such a plan may also include provisions for the replacement of local flood plain storage volume, where such storage volume is lost or diminished as a result of approved development.
- (4) Any earth change within a state-regulated floodplain shall only be undertaken in accordance with any required state or federal permit.
- (5) The degree of flood protection required by this chapter is found to be the minimum necessary and reasonable. Larger floods and higher floodwater heights may occur than will be mitigated or controlled by compliance with these requirements. This chapter is not intended to and shall not be construed to represent or guarantee that areas outside the floodway or the state-regulated floodplain or uses permitted within such areas will remain free from flooding or flood damage. Compliance with the terms of this chapter will not guarantee freedom from property damage, personal injury, or death. This chapter is not intended and shall not be construed to create any obligation, responsibility, or liability for the city or any city officer, employee, board member, volunteer or other agent for any flood or flood related damage.

**Sec. 68-35 – Soil Erosion and Sedimentation Control.**

- (1) Persons who cause, in whole or in part, any earth change must provide soil erosion and sedimentation control to adequately prevent soils from being eroded and discharged or deposited onto adjacent properties or into a stormwater drainage system, a public - right-of-way, wetland, creek, stream, water body, or floodplain. All development must comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- (2) During any earth change which exposes soil to an increased risk of erosion or sediment track-out, the property owner and other persons causing or participating in the earth change must:
  - (a) Comply with the stormwater management standards of this chapter.
  - (b) Obtain and comply with the terms of any soil erosion and sedimentation control permit required by law.
  - (c) Prevent damage to public utilities or services within the limits of grading and within any routes of travel or areas of work of construction equipment.
  - (d) Prevent damage to or impairment of any water body on or near the location of earth change or affected by the earth change.
  - (e) Prevent damage to adjacent or nearby land.
  - (f) Apply for all and obtain required approvals or permits prior to the commencing work.
  - (g) Proceed with the work only in accordance with the approved plans and in compliance with this chapter and the Stormwater Standards Manual.
  - (h) Maintain all required soil erosion and sedimentation control measures, including but not limited to, measures required for compliance with the terms of this chapter.
  - (i) Promptly remove all soil, sediment, debris, or other materials applied, dumped, tracked, or otherwise deposited on any lands, rights-of-way, or facilities, as directed by the agency issuing the soil erosion and sediment control permit. Removal of all such soil, sediment, debris or other materials 24 hours will be *prima facie* compliance with this requirement, unless such materials present an immediate hazard to public health and safety.

- (j) Refrain from grading lands at locations near or adjoining lands, rights-of-way, or other public or private property without providing adequate support or other measures as to protect such other lands, streets, sidewalks or other property from settling, cracking or sustaining other damage
- (k) The property owner must have the soil erosion and sediment control measure inspected weekly and within 24 hours of a rain event of sufficient quantity to cause runoff. The inspection for sites 1-acre or greater must be conducted by a EGLE certified construction site stormwater operator who shall maintain written inspection logs. Logs shall be made available to city engineer on request.

**Sec. 68-36. – Building Openings.**

- (1) No building opening of any building shall be constructed below the most restrictive of the following elevations:
  - (a) 1-foot above the base flood elevation.
  - (b) 1-foot above the 100-year water surface hydraulic grade line of the stormwater system.
  - (c) The building opening established at the time of plat or development approval and on file with the city.
- (2) The lowest floor of any building shall not be constructed below the most restrictive of the following:
  - (a) 1 foot above the highest known ground water elevation.
  - (b) The lowest allowable floor elevation established during plat or other development approval by the city.
- (3) The city engineer may grant a waiver from elevations stated in subsection (1) following receipt of a certification from a registered professional engineer demonstrating that the proposed elevation does not pose a risk of flooding.
- (4) Upon completion of construction of the structure's foundation and/or slab on grade, a registered land surveyor must certify any minimum building opening or lowest floor elevation required by this chapter. This certificate shall attest that the building opening or lowest floor elevation complies with the standards of this chapter. The building permittee must submit the certificate to the city's building official prior to commencement of framing and/or structural steel placement. If the surveyor finds that the minimum building opening or lowest floor elevation is below the elevation specified in subsection (1), that building opening must be raised using a method that meets the city building official's approval. After reconstruction, a registered land surveyor or engineer must re-certify that the minimum building opening or lowest floor elevation complies with the standards of this chapter prior to commencement of framing and/or structural steel placement.

**Sec. 68-37. – Sump Pump Discharge.**

- (1) Whenever building footing drains are required or used, a direct connection between the footing drains and the storm sewer through a sump pump-check valve system, or a gravity pipe with a double flap gate valve for backflow prevention, is required. The check valve system must be installed on private property and maintained by the property owner.
- (2) A stormwater lateral must be provided for each parcel at the time of storm sewer construction. If no lateral is provided, the property owner must discharge said water in such a manner as to not impact neighboring land or public streets. If a stormwater lateral does not exist, and if it is technically feasible to construct one, the property owner may install one at their expense. Any work to be conducted within the right-of-way must be expressly approved by the city engineer.
- (3) The property owner will have all risks associated with connecting directly into the storm sewer system. Requirements in subsection (1) are the minimum required for the city to allow connection of a foundation drain to the storm sewer system. Additional measures may be considered to reduce the risk of storm sewer backups, such as the inclusion of a physical air gap between the residential stormwater discharge line and the public storm sewer system. All backflow prevention devices must be installed on private property and maintained by the property owner. Stormwater runoff shall not be redirected or infiltrated within the influence of footing drains.
- (4) None of the requirements of this section shall be interpreted to require a property owner to connect to the storm sewer system.
- (5) If a storm sewer connection is not used, foundation drain outlets shall comply with city requirements including those in this chapter, applicable construction codes, and other city ordinance provisions.

**ARTICLE IV – PROHIBITIONS AND EXEMPTIONS**

**Sec. 68-41 – Prohibited Discharges.**

- (1) No person shall discharge to a water body, directly or indirectly, any substance other than stormwater or an exempted discharge. Any person discharging stormwater must effectively prevent pollutants from being discharged with the stormwater, except in accordance with BMPs.
- (2) The city engineer may require dischargers to implement pollution prevention measures, utilizing BMPs as necessary, to prevent or reduce the discharge of pollutants into the city's stormwater drainage system.
- (3) No person shall discharge or cause to be discharged into the city's storm drain system or watercourse any materials, including, but not limited to, pollutants, or water containing any pollutants that cause or contribute to a violation of applicable water quality standards other than stormwater. The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited except for discharges authorized by the city as being necessary to protect public health and safety.
- (4) Prohibition of illicit connections
  - (a) The construction, use, maintenance, or continued existence of illicit connections to the MS4 is prohibited.
  - (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
  - (c) Connection of line conveying wastewater to the MS4 or allowing such a connection to continue, is, without limitation, a violation of this chapter.
- (5) The prohibitions of this section shall not apply to any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, if that the discharge fully complies with all requirements of the permit, waiver, or order and other applicable laws and regulations, and if that written approval has been granted for any discharge to the MS4.

#### **Sec. 68-42 – Exempted Discharges.**

- (1) The following non-stormwater discharges are exempt from requirement of this article provided they do not violate or result in violation of State Water Quality Standards:
  - (a) Water supply line flushing.
  - (b) Landscape irrigation.
  - (c) Diverted stream flows.
  - (d) Rising ground water.
  - (e) Uncontaminated ground water infiltration to storm drains.
  - (f) Uncontaminated pumped ground water.
  - (g) Discharges from potable water sources.
  - (h) Foundation drains.
  - (i) Air conditioning condensate.
  - (j) Individual residential car washing.
  - (k) Dechlorinated swimming pool water.
  - (l) Street wash water.
  - (m) Discharges or flows from emergency firefighting activities.
  - (n) Discharges for which a specific federal or state permit has been issued.
- (2) None of the exemptions in subsection (1) eliminate the need to provide appropriate pollution control or pollution prevention measures required under this ordinance or under any other federal or state laws, rules, or regulations.

#### **Sec. 68-43 – Interference with Natural or Artificial Drains.**

- (1) It shall be unlawful for any person to stop, fill, dam, confine, pave, alter the course of, or otherwise interfere with any natural or constructed drain, ditch, swale, culvert, water body, floodplain, or flood prone area without first submitting a drainage plan to the city engineer and receiving approval of that plan. Any deviation from the approved plan is a violation of this chapter. However, this section does not prohibit a necessary emergency action to prevent or mitigate drainage that would be injurious to the environment or the public health, safety, or welfare.
- (2) No filling, blocking, fencing or above-surface vegetation planting shall take place within a floodway.
- (3) No shrubs or trees shall be planted below the top of the bank of a water body.
- (4) For an overland flow-way:
  - (a) Silt screen fences are prohibited below the top of the bank of a water body.

- (b) Chain link fences may be permitted if the city engineer determines that the fence will not obstruct or divert the flow of water.
- (c) If a fence is removed by the city for drain access or drain maintenance, the fence shall be replaced by the owner of the fence at the owner's expense.
- (5) Unless otherwise approved by the city engineer, shrubs, trees, or other above-ground vegetation shall not be planted over the top of an underground storm sewer or over the top of the easement within which the storm sewer has been installed.

**Sec. 68-44 – Storage of Materials in Drainageway.**

It shall be unlawful for any person to store, stockpile or dispose of any hazardous, toxic, or non-toxic material including, but not limited to, chemicals, explosives, buoyant materials, yard wastes, logs, brush, unsecured landscaping materials, play or work sheds, animal wastes, fertilizers, flammable liquids, or pollutants within an overland flow-way, drainage system, or a floodplain unless adequate protection and or containment has been provided to prevent such materials from entering, diverting or blocking the city's drainage system, except as specifically permitted by state and federal laws, rules or regulations.

**ARTICLE V – INSPECTION, MONITORING, REPORTING, AND RECORDKEEPING**

**Sec. 68-51. – Inspection and Sampling.**

The city may inspect and/or obtain stormwater samples from stormwater management facilities of any discharger to determine compliance with the requirements of this chapter. Upon request, the discharger shall allow the city's properly identified representative to enter upon the discharger's premises at any time necessary for such inspection or sampling. Except in exigent circumstances, the city shall make a reasonable effort to provide the discharger with advance notice of inspection and/or sampling. Unreasonable delays in allowing access to a discharger's facility is a violation of this chapter. As a condition of the issuance of a permit under this chapter, a permittee is deemed to consent to the city's exercise of its right to enter and to place on the discharger's property the equipment or devices used for such sampling or inspection.

**Sec. 68-52. – Stormwater Monitoring Facilities.**

When directed by the city to do so, a discharger of stormwater runoff shall, at its own expense, install and operate equipment or devices for the monitoring of stormwater runoff so as to provide for inspection, sampling, and flow measurement of each discharge to a water body or a stormwater management facility. The city may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from or as a result of such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained in accordance with applicable laws, ordinances, rules, and regulations.

**Sec. 68-53. – Accidental Discharges.**

- (1) A discharger who accidentally discharges into a water body any substance other than stormwater or an exempted discharge must immediately inform the city concerning the discharge. If that notification is given orally, a written report concerning the discharge shall be filed with the engineer within 5-days. The written report shall specify all the following:
  - (a) The composition and cause of the discharge.
  - (b) The exact date, time, and estimated volume of the discharge.
  - (c) All measures taken to date to clean up the accidental discharge, and all measures proposed to be taken to reduce and prevent any recurrence.
  - (d) The name and telephone number of the person making the report and the name of a person who may be contacted for additional information on the matter.
  - (e) The name and contact information for the property owner of the property from which the discharge occurred.
- (2) A properly reported accidental discharge shall be an affirmative defense to a civil infraction proceeding brought under this chapter against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, recover costs, or to obtain other relief as a result of or arising out of the discharge. A discharge shall be considered properly reported only if the discharger complies with all the requirements of subsection (1).

**Sec. 68-54. – Record Keeping Requirement.**



A person subject to this chapter shall retain and preserve for no less than 3 years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence and records, including, without limitation, any written records and any records on magnetic or electronic media and any and all summaries of such records, relating to monitoring, sampling, and chemical analysis of any discharge or stormwater runoff from any property.

## **ARTICLE VI – ENFORCEMENT**

### **Sec. 68-61. – Sanctions for Violations.**

- (1) Except as otherwise provided in this section, a violation of this chapter is a municipal civil infraction punishable by a fine of not less than \$250 for a first offense, \$1,000 for a second offense, and \$2,500 for any subsequent offense. In addition to such fines, the court may order other relief such as requiring payment of costs, damages, and expenses, and ordering compliance as authorized by chapter 1 of this Code and by chapter 87 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8701 *et seq.* and other applicable laws, including, without limitation, equitable relief; provided, however, that the violation stated in Section 6.01 (2) shall be a misdemeanor.
- (2) Violation of a stop work order issued under section 68-62 is a misdemeanor punishable by a fine of no more than five hundred (500) dollars or imprisonment for no more than 93 days, or both such fine and imprisonment, and such person shall also pay such costs of prosecution and other charges as may be imposed in the discretion of the court.
- (3) Each day a violation occurs or continues is a separate offense.
- (4) Rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law.
- (5) An admission or determination of responsibility or guilt shall not exempt the offender from compliance with the requirements of this ordinance.
- (6) For purposes of this section, “subsequent offense” means a violation of the provisions of this chapter committed by the same person within 3 years months of a previous violation of the same provision of this chapter for which said person admitted responsibility or guilt or was adjudicated to be responsible or guilty.
- (7) Any person who aids or abets a person in a violation of this chapter shall be subject to the sanctions provided in this section.
- (8) The city engineer, a deputy city engineer, and all officers and persons designated by sections 1-28 and 1-30 of this Code are authorized to issue municipal civil infraction citations for violations of this chapter.
- (9) The city may initiate a cause of action to recover damages or to seek injunctive or other equitable relief related to any violation of this chapter in lieu of or in addition to pursuing municipal civil infraction actions or misdemeanor prosecutions.
- (10) Violations of this chapter constitute defaults of the city the preclude a violator who has not entirely remedied the violation and paid any ensuing amounts owed the city or owed due to a municipal civil infraction action or prosecution under this chapter from entering into any contract with the city or from being issued a city permit or license, except a permit needed to comply with this chapter.

### **Sec. 68-62. – Stop Work Order.**

Where work is in progress that causes or constitutes, in whole or in part, a violation of this chapter, the city engineer or city building official is authorized to issue a stop work order to prevent further or continuing violations or adverse effects. All persons to whom a stop work order is directed, or who are involved in any way with the work or matter described in a stop work order must fully and immediately comply with that order.

### **Sec. 68-63. – Failure to Comply; Completion.**

In addition to any other remedies, should a property owner fail to comply with this chapter, the city may, after giving reasonable notice and an opportunity for compliance, have the necessary work done, and the owner shall be obligated to promptly reimburse the city for all costs of such work. Without limiting the foregoing, a failure to comply or otherwise bring property into compliance with this ordinance is deemed a public nuisance and shall be subject to abatement.

### **Sec. 68-64. – Emergency Measures.**

When immediate measures are necessary to (i) protect the public safety, health or welfare, (ii) prevent personal injury or damage to property, or (iii) protect natural resources or the environment, the city may

undertake or arrange for such measures. Property owners shall be responsible for costs of such measures made necessary due to a violation of this chapter and shall promptly reimburse the city all such costs.

#### **Sec. 68-65. – Cost Recovery for Damage to Storm Drain System**

A discharger shall be liable for all costs the city incurs as the result of a discharge that produces a deposit or obstruction, or causes damage to, or impairs a storm drain, or violates any of the provisions of this chapter. Costs include, but are not limited to, those penalties levied by the EPA or EGLE for violation of a NPDES permit, attorney fees, and other costs and expenses.

#### **Sec. 68-66. – Collection of Costs; Lien.**

- (1) To the extent permitted by law, fees, costs, fines and other amounts required to be paid under this chapter shall be liens of the premises on which development, discharges or other activities subject or violating this chapter occurred as provided in the revenue bond act of 1933, MCL 141.101 *et seq.* Any such amounts which are delinquent for 6 months or more may be certified annually to the city treasurer who shall enter the lien on the next tax roll against the premises and the costs shall be collected and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien of taxes.
- (2) Alternatively, the city may (i) undertake a single lot special assessment to recover those fees, costs, fines, and other amounts in accordance with section 66-23 of this Code, or (ii) undertake other remedies as provided in this article or by law.

#### **Sec. 68-67. – Appeals.**

- (1) Except as provided in subsection (2), a person aggrieved by a decision of a city official under this chapter may appeal in writing, no later than 30 days after the action or decision being appealed from, to the city's construction board of appeals. The appeal shall identify the manner being appealed and the detail the entire basis for the appeal. The construction board of appeals shall consider the appeal and may affirm, reverse, or modify the action being appealed based on the standards in this chapter and may impose reasonable conditions any decision or action as needed to comply with the terms and purposes of this chapter. The construction board of appeals shall make its decision in writing and shall furnish a copy of the decision to the person making the appeal. In considering any such appeal, the construction board of appeals may consider the recommendations of city engineer, other city officers and staff, and the comments of other persons having knowledge of the matter.
- (2) Challenges to a municipal civil infraction citation or misdemeanor prosecution must be made in the district court under the procedures relating to those actions. Challenges to a single lot special assessments, a lawsuit, or a property tax lien on a premises must be made in accordance with legal procedures challenging those actions.

#### **Sec. 68-68. – Suspension of MS4 Access.**

- (1) The city may, without prior notice, suspend a person's discharge access to the MS4 when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of person or the MS4. If the person fails to comply with a suspension order issued under this section, the city may take any actions the city deems necessary to prevent or minimize damage to the MS4 or the environment, or to minimize danger to persons. A person failing to comply with a suspension order pursuant to this section shall be liable for all cost incurred by the as the result of such failure to comply and a violation shall constitute a public nuisance *per se*.
- (2) Any person discharging to the MS4 in violation of this chapter may have the person's MS4 access terminated if such termination would abate or reduce an illicit discharge. Except in exigent circumstances, the will notify a violator of the proposed termination of its MS4. A person violates this chapter if, without the city's prior approval, the person reinstates MS4 access to a premises terminated pursuant to this section.

### **ARTICLE VII – STORMWATER EASEMENTS AND MAINTENANCE AGREEMENTS**

#### **Sec. 68-71. – Applicability of Requirements.**

The requirements of this article concerning stormwater easements and maintenance agreements shall apply to all persons required to submit a drainage plan to the city for review and approval.

#### **Sec. 68-72. – Stormwater Management Easements.**

The property owner shall provide all stormwater management easements necessary to implement the approved drainage plan and to otherwise comply with this ordinance in form and substance required by the city and shall record such easements as directed by the city. The easements shall be in a form and substance acceptable to the city engineer and city attorney and shall assure access for proper inspection and maintenance of stormwater management facilities and provide adequate emergency overland flow-ways.

#### **Sec. 68-73. – Maintenance Agreements.**

- (1) The developer shall provide all stormwater maintenance agreements necessary to implement the approved drainage plan and to otherwise comply with this ordinance in form and substance as required by the city and shall record such agreements as directed by the city. The maintenance agreements shall, among other matters, assure access for proper inspection and maintenance or corrective actions of stormwater BMPs, including emergency overland flow-ways, and include provisions for tracking the transfer of operation and maintenance responsibility to ensure the performance standards are met in perpetuity.
- (2) Maintenance agreements shall include:
  - (a) A maintenance plan and schedule for routine, emergency and long-term maintenance of all structural and vegetative stormwater BMPs installed and implemented to meet the performance standards, with a detailed annual estimated budget for the initial three years, and a clear statement that only future maintenance activities in accordance with the maintenance agreement plan shall be permitted without the necessity of securing new permits.
  - (b) Written notice and submittal of maintenance documentation shall be provided to the city by the property owner at the interval set forth in the maintenance agreement and subject to the provisions of articles V and VI.
  - (c) If the city finds, following notice and an opportunity to be heard by the property owner, that there has been a material failure or refusal to undertake maintenance as required under this ordinance and/or as required in the approved maintenance agreement as required in this article, the city shall then be authorized, but not required, to hire an entity with qualifications and experience in the subject matter to undertake the monitoring and maintenance required, in which event the property owner must advance or reimburse payment for all costs and expense associated with such monitoring and maintenance, together with a reasonable administrative fee. The maintenance agreement required under this chapter shall contain a provision spelling out the requirements and, if the applicant objects in any respect to such provision or the underlying rights and obligations, such objection shall be resolved prior to the commencement of construction of the proposed development of the property.

#### **Sec. 68-74. - Establishment of County or City Drains.**

Prior to final approval of a platted subdivision, the stormwater management facilities for the subdivision shall, if directed by the city engineer, be established for long-term maintenance as county drains as authorized in the Drain Code or city drains.

### **ARTICLE VIII – PERFORMANCE AND DESIGN STANDARDS**

#### **Sec. 68-81. – Design Standards.**

Stormwater BMPs shall be designed to manage stormwater flow within the available capacity of the downstream conveyance system as determined by the city. In addition, stormwater BMPs shall be designed to meet performance standards as described in section 68-82. Stormwater system design shall be in accordance with the latest version of the Stormwater Standards Manual.

#### **Sec. 68-82. – Performance Standards.**

The following stormwater management performance standards are established:

- (a) Water Quality Treatment:
  - (1) Treat the calculated site runoff for the entire project site from the 90% annual non-exceedance storm, which is approximately equal to 1-inch of rain (*i.e.*, on average, 90% of the storm in a given year, produces 1-inch or less). The treatment volume specified is based on capturing and treating the volume of stormwater that is the first to runoff in a storm and expected to contain the majority of pollutants. This volume of runoff is often referred to as the “first flush”. The water quality treatment standard is required for all sites.

- (2) Methods selected to treat the volume of water calculated for the water quality treatment performance standard must be designed on a site-specific basis to achieve either a minimum of 80% removal of TSS, as compared with uncontrolled runoff, or discharge concentration of TSS that does not exceed 80 mg/l. This performance standard is based on TSS as a surrogate for other pollutants normally found in stormwater runoff. Control of TSS to meet this standard is expected to achieve control of other pollutants to an acceptable level that protects water quality.
- (b) Channel Protection.
- (1) Maintain the post-development project site runoff volume and peak flow rate at or below pre-development levels for all storms up to the 2-year, 24-hour event.
  - (2) At a minimum, pre-development is defined as the last land use prior to the planned new development or redevelopment. The channel protection standard is required for stormwater discharges to surface waters or the MS4.
- (c) Flood control.
- (1) Control the volume of site runoff from the flood control rainfall event with a maximum allowable release rate to reduce the potential for property damage for overbank flooding and preserve existing floodplains. The flood control event and maximum allowable release rate shall be determined by the city]. The flood control standard is required for all sites.
  - (2) Acceptable overflow routes for the 100-year flood shall be identified for the site and for downstream areas between the site and the nearest acceptable floodway or outlet. Stormwater conveyance systems are usually designed to handle flows generated by the 10-year storm. When larger storms generate higher flows, the conveyance system is expected to surcharge resulting in stormwater accumulating on the surface of the ground. Gravity will cause such stormwater to flow overland to lower elevations. By carefully managing the shape of the land surface such overland stormwater flow can be directed to locations that will not cause property damage. Adequate emergency overland flow-ways will direct stormwater flows generated by the 100-year storm to avoid damage to structures and facilities.
- (d) Site-Specific Requirements:
- (1) Pretreatment of site runoff is required on a site-specific basis prior to discharging to certain stormwater BMPs. Pretreatment provides for the removal of fine sediment, trash and debris, and preserves the longevity and function of the BMP.
  - (2) Some land use activities have a potentially greater risk of polluted runoff than others. Project sites with these types of activities are referred to as "hot spots" and include uses such as gas stations, commercial vehicle maintenance and repair, auto recyclers, recycling centers, and scrap yards. Hot spots also include areas with the potential for contaminating public water supply intakes. Pretreatment of stormwater runoff to address pollutants associated with hot spots is required for the site. Stormwater management strategies and BMPs that reduce the potential to mobilize existing soil and groundwater contaminants, or that capture and treat stormwater runoff and/or accidental spills to protect groundwater or nearby surface waters are required.
  - (3) Stormwater management strategies and BMPs that minimize thermal impacts from site runoff and maximize groundwater recharge are required for sites with a surface water discharge to a coldwater stream as determined by the MDNR.

**Sec. 68-83. – Off-site Mitigation and Payment-in-Lieu Programs for Redevelopment Projects.**

The water quality treatment and channel protection performance standards focus on maintaining or restoring stable hydrology. However, potential physical constraints may limit the ability to fully meet the post-construction requirement at the project site.

- (a) The city has some regional detention basins, one or more of which may have remaining capacity to accommodate some drainage from parcels located within the zone that a regional detention basin was intended to serve. If a regional detention basin has adequate remaining capacity to accommodate stormwater from a development, the property owner of the development site may use capacity within that regional detention basin as approved by the city engineer upon payment of fees in accordance with the established fee structure for use of that regional detention basin.
- (b) When physical constraints limit the feasibility of maintaining or restoring hydrology and there is not an available regional city regional detention basin, offsite mitigation and/or payment-in-lieu may be approved by the city in accordance with this subsection.

- (1) Offsite mitigation will only be considered if there is a planned or constructed private mitigation bank or project immediately downstream. The city will only consider payment-in-lieu if the city has a planned or constructed water quality improvement project immediately downstream. The cost of payment-in-lieu will be considered on a case-by-case basis and will represent the actual cost of implementing public downstream water quality enhancements. Any request for payment-in-lieu shall be accompanied by a development agreement that clearly states a public/private partnership has been formed for the site development. Payment-in-lieu will be considered, at the discretion of the city, when reviewing a project of regional significance.
- (2) Consideration of either off-site mitigation or payment-in-lieu will be entirely the discretion of the city.
- (3) Offsite mitigation refers to BMPs implemented at a location different from the original project site.
- (4) Payment-in-lieu refers to the developer paying a fee to the city that is applied to a public stormwater management project. The stormwater management project may be either a new BMP or a retrofit to an existing BMP and developed in accordance with the Stormwater Standards Manual.
- (5) The location for offsite mitigation and payment-in-lieu projects shall be within the same watershed and sewershed as the original project, and within the city's jurisdictional boundaries. The watershed is the area represented by EGLE's 10-digit Hydrologic Unit Code (HUC).
- (6) The determination to approve offsite mitigation or payment-in-lieu will be based on multiple criteria and not solely on the difficulty of cost of implanting BMPs on site. Conditions under which the option to move offsite would become available may include:
  - (A) Limited size of the lot outside of the building footprint to create the necessary infiltration capacity even with amended soils.
  - (B) Soil instability as documents by a thorough geotechnical analysis.
  - (C) A site use that is inconsistent with capture and reuse of stormwater.
  - (D) Too much shade or other physical conditions that preclude adequate use of plants.
  - (E) The potential water quality impact from the original project site and the benefits realized at the offsite location.
- (7) The city may approve offsite mitigation or payment-in-lieu if the developer demonstrates that site constraints preclude sufficient treatment and restoration of hydrology onsite. At a minimum the city requires:
  - (A) The offset ratio for the amount of stormwater not managed onsite in relation to the amount of stormwater required to be mitigated at another site, or for which in-lieu payments will be made as follows:
    - (i) First Tier: Manage a minimum of zero point four (0.4) inches of stormwater runoff onsite and provide a 1:1.5 offset ratio for the remaining amount of stormwater managed offsite.
    - (ii) Second Tier: If it is completely infeasible to manage the minimum onsite, provide a 1:2 offset ratio for the amount of stormwater managed onsite.
  - (B) Offsite mitigation and payment-in-lieu projects shall be completed within 24-months after the start of the original site construction.
  - (C) Offset and in-lieu projects shall be preserved and maintained in perpetuity through city-administered procedures and tracking system.

**Sec. 68-84. – Alternative Approach for Channel Protection.**

- (1) In many cases, infiltration will likely be used as the primary means of retention. It is not, however, the sole means of providing onsite retention, and the developer must include consideration of stormwater reuse, interception, evapotranspiration, and other vegetative (non-structural) BMPs at the project site. Site constraints that limit the use of infiltration may include:
  - (a) Poorly draining soils (<0.24-inches/hour; typically, hydrologic soil groups C and D).
  - (b) Bedrock.
  - (c) High groundwater, or the potential of mounded groundwater to impair other uses.
  - (d) Wellhead protection areas.
  - (e) Stormwater hot spots.
  - (f) NREPA, Parts 201 and 213 sites, and areas of soil or groundwater contamination.
- (2) The planning commission may grant a waiver of the onsite retention criteria for channel protection described in section 68-82 and allow an alternative approach to meet the channel protection performance standard if the developer demonstrates that site constraints preclude sufficient retention onsite. If a waiver is granted, the developer must detain the portion of the channel protection volume



unable to be retained onsite for a minimum of 24-hours with a maximum release rate no greater than the existing 1-year peak discharge, and a drawdown time no greater than 72-hours.

**Sec. 68-85. – Resolution to Establish Additional Performance and Design Standards.**

The city council may adopt a resolution establishing more detailed design and performance standards for stormwater management facilities, consistent with this chapter, and to further implement its purposes.

**ARTICLE IX – OTHER MATTERS**

**Sec. 68-91. – Headings.**

Article and section heading in this chapter are intended for convenience only and shall not affect the meaning or interpretation of the text of the articles or sections to which they refer.

**Sec. 68-93. – Severability.**

The provisions of this chapter are severable. If a part or provision of this chapter is declared invalid or unenforceable by any court of competent jurisdiction, that invalidity or unenforceability shall not affect any other part or provision of this chapter.

## **STAFF REPORT**

Date: December 14, 2021  
Subject: Stormwater Ordinance  
From: Scott Smith, City Attorney  
Peter Klooster, City Engineer's Office  
Meeting Date: December 20, 2021

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### **RECOMMENDATION:**

Adopt the Ordinance to Amend the Code of Ordinances, City of Wyoming Michigan, by Adding Chapter 68, Entitled "Stormwater," to Regulate And Control Stormwater Runoff and Discharges, Protect Floodways, Control Soil Erosion, Protect Drains, Provide for Inspection and Monitoring of Stormwater and Other Discharges, Establish Stormwater Design and Performance Standards, and Provide Penalties for Violations; and by Repealing Articles IV and V of Chapter 86 Entitled "Stormwater" and "Stormwater Discharges."

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Community – Stormwater regulations ensure developers and other property owners are treated predictably and fairly, ensure stormwater flows do not adversely impact other property, protect against adverse environmental consequences, and help provide for appropriate use of city resources.

Safety – Polluted stormwater, standing or stagnant pools of stormwater, excess flows of stormwater in rights-of-way, and other inappropriate stormwater handling and discharge can adversely risk public health and safety.

Stewardship – Ensuring that developers and property owners appropriately address stormwater flows and contribute toward the cost of city stormwater facilities ensures the costs are borne by those benefitting from the development or property improvements.

### **BUDGET IMPACT:**

The proposed amendments will not impact the budget.

### **DISCUSSION:**

The National Pollutant Discharge Elimination System (NPDES) permit issued by the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE) for the City's stormwater system requires the City to adopt a comprehensive stormwater ordinance. The proposed stormwater ordinance is based on a model ordinance drafted by the Lower Grand River Organization of Watersheds (LGROW) for use by many West Michigan communities. Use of LGROW's model ordinance as a basis for Wyoming's ordinance ensures consistency in regulation, acceptance by MDEGLE, and makes it more predictable for developers and property owners.

The proposed ordinance generally applies to developments, including significant alterations to property, of one acre or more in size. It therefore has limited applicability to single lot or other small developments.

The proposed ordinance provides consequences for violations and enable the City to recover certain costs associated with ordinance administration and enforcement. It also repeals existing ordinance provisions addressing stormwater.